

**From:** [Moore, Dawn M.](#)  
**To:** [Agatha Pak](#); [Lipkin, Harriet](#); [valerie.murzi@stationcasinos.com](mailto:valerie.murzi@stationcasinos.com); [JTomberlin@myerslawgroup.com](mailto:JTomberlin@myerslawgroup.com); [jsoto@local501.org](mailto:jsoto@local501.org)  
**Subject:** NP Sunset LLC d/b/a Sunset Station Hotel Casino (28-RC-222992)  
**Date:** Thursday, July 12, 2018 12:25:41 PM  
**Attachments:** [EXH.28-RC-222992.Board Exhibit 3.pdf](#)  
[image001.png](#)  
[ORD.28-RC-222992.Order Reopening Hearing Closing Hearing.pdf](#)

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Please see the attached documents, BD Exhibit 3 and BD Exhibit 4, to be included in the record for the hearing conducted on Monday, July 9, 2018 in the above subject matter.

*Dawn M. Moore*

Administrative Assistant  
Region 28 – Las Vegas Resident Office  
National Labor Relations Board  
Foley Federal Building  
300 Las Vegas Boulevard South, Suite 2-901  
Las Vegas, NV 89101-5833  
Tel: (702) 820-7466  
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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO**

**Employer**

**and**

**Case 28-RC-222992**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 501, AFL-CIO**

**Petitioner**

**STIPULATION**

It is stipulated by the undersigned that:

1. The undersigned have been informed of the procedures at formal hearings before the Board by service of the Statement of Standard Procedures with the Notice of Representation Hearing, and the Hearing Officer has offered to us additional copies of the Statement of Standard Procedures.
2. To the extent that the formal documents in this proceeding do not correctly reflect the names of the parties, all said documents may be considered as amended to correctly reflect the names as set forth above.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
4. The Petitioner admits to membership, and represents non-guard employees.
5. There is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein and there is no contract bar to this proceeding.

6. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, and is subject to the jurisdiction of the National Labor Relations Board.

Commerce facts:

The Employer, NP Sunset LLC d/b/a Sunset Station Hotel & Casino, a Nevada limited liability company with an office and place of business in Henderson, Nevada, has been engaged in the operation of a hotel and casino, providing gaming, lodging, entertainment, and dining services. During the 12-month period ending June 29, 2018, the Employer, in conducting its business operations described above, derived gross revenue in excess of \$500,000. During the same period of time, the Employer purchased and received at its Nevada facility goods valued in excess of \$50,000 directly from points outside the State of Nevada.

7. There are no petitions pending in other Regional offices involving facilities of the Employer.

8. Any unit found appropriate by the Regional Director should exclude, "All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act."

9. If an election is directed by the Regional Director, a secret ballot election under the Board's Rules and Regulations should be held under the supervision of the Regional Director on the date and at the hours and place specified below:

DATE:	Thursday, July 19, 2018	HOURS:	7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m.
PLACE:	Sevilla Banquet Room 1301 West Sunset Road Henderson, NV 89014		

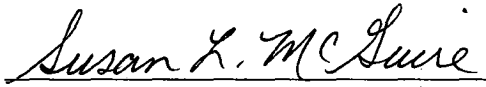
Upon the approval of this Stipulation by the Hearing Officer, it may be admitted, without objection, as Board Exhibit No. 3 in this proceeding.



\_\_\_\_\_  
For the Employer

\_\_\_\_\_  
For the Petitioner

RECEIVED:



\_\_\_\_\_  
Hearing Officer

Date:

July 12, 2018

Upon the approval of this Stipulation by the Hearing Officer, it may be admitted, without objection, as Board Exhibit No. 3 in this proceeding.

\_\_\_\_\_  
For the Employer

John Tomberlin  
For the Petitioner

RECEIVED:

Susan L. McGuire  
Hearing Officer

Date:

July 12, 2018

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO**

**Employer**

**and**

**Case 28-RC-222992**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Petitioner**

**ORDER OPENING RECORD AND ORDER CLOSING RECORD**

The pre-election hearing in this matter closed on July 9, 2018. On July 11, 2018, the court reporter present at the hearing informed the Hearing Officer that Board Exhibit 2, a document addressing stipulations reached between the Employer and the Petitioner, was missing and could not be located. After discussion with the parties regarding Board Exhibit 2 being misplaced, the parties agreed to re-execute and offer an identical document containing the same stipulations as those previously presented in Board Exhibit GC-2. Pursuant to that agreement, the parties have executed this exhibit which is identified as Board Exhibit GC-3. Upon careful consideration and for good cause shown,

**IT IS ORDERED** that the record is hereby reopened and the following documents are offered into evidence:

- 1) The parties' written Stipulation executed on July 11, 2018, hereby identified as Board Exhibit 3.
- 2) This Order Reopening Record and Closing Record, and affidavit of service of such document, which are together marked as Board Exhibit 4.

Board Exhibits 3 and 4 are received into evidence.

**IT IS FURTHER ORDERED** that upon receipt of Board Exhibits 3 and 4 into evidence, the hearing is now closed.

Dated at Phoenix, Arizona, this 12<sup>th</sup> day of July 2018.

/s/ *Cornele A. Overstreet*  
Cornele A. Overstreet, Regional Director

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION HOTEL &  
CASINO**

**Employer**

**and**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Petitioner**

**Case 28-RC-222992**

DATE OF MAILING: July 12, 2018

**AFFIDAVIT OF SERVICE OF:      ORDER OPENING RECORD AND ORDER CLOSING RECORD**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by electronic mail and regular mail upon the following persons:

Harriet Lipkin, Attorney at Law  
DLA Piper LLP (US)  
500 8th Street NW  
Washington, DC 20004-2131  
Email: [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com)

NP Sunset LLC d/b/a  
Sunset Station Hotel Casino  
1301 West Sunset Road  
Henderson, NV 89014  
Email: [valerie.murzl@stationcasinos.com](mailto:valerie.murzl@stationcasinos.com)

John M. Tomberlin, Attorney at Law  
Meyers Law Group  
9327 Fairway View Pl, Suite 100  
Rancho Cucamonga, CA 91730  
Email: [JTomberlin@myerslawgroup.com](mailto:JTomberlin@myerslawgroup.com)

Jose Soto, Director of Organizing  
International Union of Operating  
Engineers Local 501, AFL-CIO  
301 Deauville Street  
Las Vegas, NV 89106  
Email: [jsoto@local501.org](mailto:jsoto@local501.org)

**July 12, 2018**

Date

Dawn M. Moore,  
Designated Agent of NLRB

Name

**/s/ Dawn M. Moore**

Signature



**From:** [Moore, Dawn M.](#)  
**To:** [Lipkin, Harriet](#); [valerie.murzi@stationcasinos.com](mailto:valerie.murzi@stationcasinos.com); [JTomberlin@myerslawgroup.com](mailto:JTomberlin@myerslawgroup.com); [jsoto@local501.org](mailto:jsoto@local501.org)  
**Subject:** NP SUNSET LLC D/B/A SUNSET STATION HOTEL & CASINO - Case 28-RC-222992  
**Date:** Friday, July 13, 2018 3:52:37 PM  
**Attachments:** [image001.png](#)  
[LTR.28-RC-222992.DDE Election Details Letter 7-13-18.pdf](#)  
[DDE.28-RC-222992.Decision and Direction of Election 7-13-18.pdf](#)  
[NEE.28-RC-222992.Notice of Election.pdf](#)

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Ladies and Gentlemen –  
Please see the attached documents.

*Dawn M. Moore*

Administrative Assistant  
Region 28 – Las Vegas Resident Office  
National Labor Relations Board  
Foley Federal Building  
300 Las Vegas Boulevard South, Suite 2-901  
Las Vegas, NV 89101-5833  
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NATIONAL LABOR  
RELATIONS BOARD



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UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 28  
2600 North Central Avenue  
Suite 1400  
Phoenix, AZ 85004

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (602)640-2160  
Fax: (602)640-2178

July 13, 2018

NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
1301 West Sunset Road  
Henderson, NV 89014  
Email: [valerie.murzl@stationcasinos.com](mailto:valerie.murzl@stationcasinos.com)

Jose Soto, Director of Organizing  
International Union of Operating Engineers  
Local 501, AFL-CIO  
301 Deauville Street  
Las Vegas, NV 89106  
Email: [jsoto@local501.org](mailto:jsoto@local501.org)

Re: NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
Case 28-RC-222992

Ladies and Gentlemen:

This letter will confirm the details of an election arranged in the above matter pursuant to the Regional Director's Decision and Direction of Election. It also provides information about posting the election notices.

**Election Arrangements**

The arrangements for the election in this matter are as follows:

**Date of Election:** Thursday, July 19, 2018

**Times:** 7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m.

**Place:** At the Employer's facility located at  
1301 West Sunset Road  
Henderson, Nevada in the Sevilla Banquet Room

**Election Observers:** Each party may have observers for each polling session. The observers may be present at the polling place during the balloting and to assist the Board

July 13, 2018

agent in counting the ballots after the polls have been closed. **Please complete the enclosed Designation of Observer form and return it to this office as soon as possible.**

**Pre-Election Conference:** A pre-election conference for all parties will be held at 6:30 a.m. on the day of and at the site of the election. The parties are requested to have their election observers present at this conference so that the observers may receive instruction from the Board Agent about their duties.

**Election Equipment:** The Board agent conducting the election will furnish the ballot box, ballots, and voting booths. The Employer is requested to provide, at the polling place, a table and a sufficient number of chairs for use by the Board agent and observers during the election.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

#### **Posting of Election Notices**

Election notices are being emailed to the parties. Section 103.20 of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places. In this case, the notices must be posted **before 12:01 a.m. on July 16, 2018**. If the Employer does not receive the notice, it should notify the Regional Office immediately. Pursuant to Section 103.20(c), a failure to do so precludes an employer from filing objections based on nonposting of the election notice.

If there are any questions, please feel free to contact Field Examiner Susan L. McGuire at telephone number (702) 820-7468 or by email at [susan.mcguire@nlrb.gov](mailto:susan.mcguire@nlrb.gov). The cooperation of all parties is sincerely appreciated.

Very truly yours,

*/s/ Cornele A. Overstreet*

Cornele A. Overstreet  
Regional Director

Enclosure: Designation of Observer Form

NP Sunset LLC d/b/a Sunset Station                      3  
Hotel & Casino  
Case 28-RC-222992

July 13, 2018

cc:     Harriet Lipkin, Attorney at Law  
         DLA Piper LLP (US)  
         500 8th Street NW  
         Washington, DC 20004-2131  
         Email: [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com)

         John M. Tomberlin, Attorney at Law  
         The Myers Law Group  
         9327 Fairway View Place, Suite 100  
         Rancho Cucamonga, CA 91730-0969  
         Email: [JTomberlin@myerslawgroup.com](mailto:JTomberlin@myerslawgroup.com)

## DESIGNATION OF OBSERVER(S)

Re: NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
Case 28-RC-222992

**NP Sunset LLC d/b/a Sunset Station Hotel & Casino** hereby designates the individual listed below to act as its observer during the election in the above case.

Observer's Name	Observer's Job Title
1.	

I certify that each of the above-named individuals is an employee of the Employer and is not a supervisor within the meaning of Section 2(11) of the Act.

NP Sunset LLC d/b/a Sunset Station Hotel & Casino  
(Name of Party)

By:

(Signature)

(Representative Name: Print or Type)

(Representative Title)

(Date)

**Note:** Board law prohibits any statutory supervisor from serving as an election observer. Section 2(11) of the National Labor Relations Act states: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

## DESIGNATION OF OBSERVER(S)

Re: NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
Case 28-RC-222992

**International Union of Operating Engineers Local 501, AFL-CIO** hereby designates the individual listed below to act as its observer during the election in the above case.

Observer's Name	Observer's Job Title
1.	

I certify that each of the above-named individuals is an employee of the Employer and is not a supervisor within the meaning of Section 2(11) of the Act.

International Union of Operating Engineers Local 501, AFL-CIO  
(Name of Party)

**By:**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Representative Name: Print or Type)

\_\_\_\_\_  
(Representative Title)

\_\_\_\_\_  
(Date)

**Note:** Board law prohibits any statutory supervisor from serving as an election observer. Section 2(11) of the National Labor Relations Act states: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO**

**Employer**

**and**

**Case 28-RC-222992**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Union of Operating Engineers Local 501, AFL-CIO (Petitioner) seeks to represent a unit of full-time and regular part-time slot technicians, utility technicians (collectively, technicians) and slot mechanics employed by NP Sunset LLC d/b/a Sunset Station Hotel & Casino (the Employer) at its Henderson, Nevada facility. The Employer contends that Petitioner cannot be certified as the representative of the employees in the petitioned-for unit under Section 9(b)(3) of the National Labor Relations Act (the Act) because the unit includes guards, and Petitioner admits employees other than guards to membership. The Employer also requested the imposition of a ban on electronic devices in the voting area.

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board decisions, I find that technicians are not guards. Additionally, I find that it is not appropriate for me to impose a ban on electronic devices in the voting area in these pre-election proceedings.

**I. FACTS**

The Employer operates the Sunset Station Hotel & Casino in Henderson, Nevada. The Employer's facility includes gaming space of over 100,000 square feet occupied, in part, by approximately 2,100 gaming machines. The Employer employs approximately 1,200 employees.

The petitioned-for unit includes slot mechanics and technicians. However, the only witness at the hearing testified that the Employer does not currently employ any slot mechanics. The Employer employs approximately twelve technicians: nine slot technicians and three utility technicians. Utility technicians are the entry level position for technicians, essentially slot technicians in training. Generally, technicians are responsible for maintaining and ensuring

proper working order of the gaming machines. These technicians are involved in all aspects of machine conversions and relocations, and perform routine and advanced machine maintenance.

Technicians work in the Slot Department. The Slot Department is under the direction of Director of Slot Operations. The slot department has two separate sides: the technical side and the operations side. Reporting to the Director of Slot Operations on the technical side are the Slot Tech Manager and the Tech Project Supervisor. The technicians report to the Tech Project Supervisor.

Reporting to the Director of Slot Operations on the Operations side is the Slot Operations Manager, the Slot Shift Manager, the Slot Lead Guest Service Ambassador, and the Guest Service Ambassadors (GSAs).

Technicians spend approximately 75% to 80% percent of their working time on the gaming floor. They are charged with installing, repairing, and maintaining various facets of the gaming machines, including all test and support equipment, including but not limited to currency counters, signs, progressive and media hardware, and related equipment.

In order to perform their work, technicians carry keys that provide access to the machines. Key issuance is controlled and monitored by the Key Watcher or the Slot Office. Guest service attendants, and supervisors and shift managers within the Slot Department also may possess such keys. Loss of control of keys or taking keys off property is considered negligence and will result in corrective counseling up to and including termination. If technicians lose keys or take keys off property, they are required to immediately notify a slot lead or above who notifies surveillance, security, and senior slot management. Technicians are responsible for interacting with agents of the Nevada Gaming Control Board (NGCB) to facilitate and assist with the NGCB's inspection of machines.

In addition to duties related to machine maintenance, technicians are tasked with performing various functions to protect gaming machines against fraud and improper manipulation, which could lead to financial losses for the Employer. Technicians assist their supervisors or shift managers to investigate customer claims of machine malfunction, which, if verified, would lead to the Employer paying out a customer's legitimate winnings. If the customer's claim is not verified, then the claim would be denied. Moreover, technicians are responsible for fixing any machine malfunction, as well as performing manufacturer-recommended repairs that arise when vendors become aware of vulnerabilities or malfunctions in their machines.

Besides aiding with claims of gaming machine malfunction, technicians assist their supervisors or shift managers to investigate possible fraud by customers. For example, a technician may be asked by their supervisor or shift manager to assist with determining whether there is evidence of tampering if there are irregular payouts on a machine. The Employer would not be able to detect certain kinds of fraud without the work performed on its machines by its technicians. Due to their intimate knowledge of the gaming systems, technicians are prohibited



from gambling at the Employer's facility. The Tech Project Supervisor, Slot Tech Manager, and Director of Slot Operations are also prohibited from gambling at the Employer's facility. The record does not reflect whether the Employer's security guards are permitted to gamble at its facility, however, most of the Employer's employees are permitted to gamble at its facility.

All of the Employer's employees are obligated to be alert for evidence of other malfeasance such as underage gambling and drinking. Instances of underage gambling could lead to fines by the NGCB and the revocation of Employer's gaming license. Employees on the gaming floor, such as technicians, GSAs, bartenders, and servers, have a heightened responsibility. Technicians would report prohibited activity to the slot team supervisor, shift manager, or security. Technicians' duties in this regard are no greater than other employees who work on the gaming floor. All employees are responsible for reporting underage gambling and drinking.

The Employer has a Security Department, separate from its Slot Department and its Surveillance Department, with different management within each department. Technicians do not carry handcuffs, firearms, or other weapons. They receive no training in typical security functions. They are not expected to restrain or apprehend guests or respond physically with force. Technicians wear black uniforms specific to technicians only, with nametags on one side of their uniform shirts and a property patch designating Stations Casino on the other side of their uniform shirts. Technicians also wear tool belts to hold the tools they use on the machines and carry radios. Technicians do not wear or carry any badges.

Security personnel also wear black uniforms, but they are different from the black uniform worn by technicians. Unlike technicians, security personnel wear badges and a belt designed to carry their handcuffs, guns, batons, and radios.

The record does not reveal that the technicians are permitted to enter any surveillance room. Technicians do not participate in "sting" operations to detect malfeasance by employees or customers. There is no record evidence that the technicians have any involvement in the confrontation, reporting, or investigations of other employees, except to the extent that inspection of a gaming machine might be required. The record lacks any evidence that technicians have an obligation to report employee misconduct beyond that of other employees.

Security personnel are tasked with patrolling the inside and outside of the Employer's facility and investigating customer-related disturbances or suspected malfeasance by employees. Security personnel and technicians are not interchangeable and do not perform each other's work duties. Whenever technicians move money from machines, they are required to contact security personnel. The record does not further detail whether security personnel access machines or are permitted to gamble at the Employer's facility.

## II. ANALYSIS

### A. Non-Guard Status of Technicians

Section 9(b)(3) of the Act prohibits the Board from certifying a labor organization as the representative of a guard unit if the labor organization has members who are non-guard employees. The Employer asserts the technicians are guards because the core function of a technician is to enforce the Employer's rules and policies against guests and employees to safeguard the Employer's property and assets. The parties stipulated that Petitioner represents non-guard employees as a complement of its membership.

To be a guard under the Act, an individual must enforce rules to protect the property of the employer's premises against employees and other persons. *Reynolds Metal Co.*, 198 NLRB 120, 120 (1972). "[T]he Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities." *Boeing Co.*, 328 NLRB 128, 130 (1999).

"Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status." *Id.* The Board has rejected the assertion that an employee's "responsibility to report security problems confers guard status." *Id.* at 131.

While the Employer instructs technicians, as part of their job duties, to report to the Employer evidence of tampering with gaming machines or other fraudulent conduct, "[a] reporting function alone, without significant security-related responsibilities, [does not] confer guard status." *Id.* In *Boeing*, the Board rejected an assertion firefighters who were required "to be alert for suspicious activity while on their tours and question unfamiliar individuals on the premises" as well as "report suspicious activity to the security department rather than deal directly with it themselves" were guards. *Id.* at 131. The Board determined that "to the extent that the firefighters'...duties conferred upon them some limited guard responsibilities, those responsibilities were only a minor and incidental part of their overall responsibilities...and, thus, do not transform the firefighters into statutory guards." *Id.* at 131.

The Employer has not supported its claim that technicians are guards. The evidence presented does not show that technicians enforce rules to protect property against employees and other persons. From the evidence of record, technicians do not perform any of the traditional guard responsibilities identified by the Board in *Boeing*. Technicians were not hired to perform any security functions, and perform no security functions beyond what would be expected of any other employees.

Any guard-like responsibilities conferred on technicians are, like the firefighters in *Boeing*, a minor and incidental part of their primary responsibility of providing services to guests gambling on the Employer's gaming machines. As stated above, technicians do not confront people but are instead simply expected to report to the Employer.

The Employer pointed to the circuit court decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), in asserting that because technicians play an integral role in detecting and investigating loss and malfeasance in connection with gaming machines, technicians are guards. In that decision, the key issue was whether surveillance technicians were guards under the Act. In finding that the surveillance technicians were guards, the Court focused on four facts: (1) that certain surveillance/security personnel could not perform their job functions without the surveillance technicians, (2) the Board did not give due consideration to the status of security in modern casinos, (3) surveillance technicians could control what surveillance/security personnel viewed via surveillance camera due to their access to the equipment and surveillance-critical areas of the casino, and (4) surveillance technicians were tasked with enforcing rules against fellow employees.

The arguments asserted by the Employer have been previously raised in *Station GVR Acquisition, LLC*, Case 28-RC-203653, in *NP Palace LLC*, Case 28-RC-211644, and in *NP Lake Mead LLC*, 28-RC-218426. In all of these cases, I found that the petitioned-for units were not "guards" as defined under Section 9(b)(3) of the Act. The Board has denied the Employer's requests for review in *Station GVR Acquisition, LLC*, 2017 WL 5969305 (Nov. 30, 2017) (unpublished order) and *NP Palace LLC*, 2018 WL 1782720 (Apr. 12, 2018) (unpublished order). The Board has not yet ruled on the Employer's request for review in *NP Lake Mead LLC*, 28-RC-218426.

The Board's reasoning in denying the Employer's request for review in *NP Palace LLC* is particularly instructive:

In denying review, we agree with the Regional Director that the D.C. Circuit's decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), is distinguishable. Unlike the employees at issue in *Bellagio*, the technicians in the present case play no special role in enforcing the Employer's rules against their coworkers and other persons beyond that of any other employee, do not control access to the Employer's surveillance technology or play a key role in its use, and do not otherwise enforce the Employer's rules in a security context. Instead, the technicians merely provide a defined, supportive role to investigators or state gaming agents through technical assistance at the request of the slot supervisors. In this respect, we reject the Employer's argument that the court's decision in *Bellagio* dispensed with the requirement that guards act to enforce the Employer's rules in a security context. Last, we observe that the technicians are part of the Employer's Slot Department, whose core function is to install and maintain the Employer's gaming machines, not

the Employer's separate Security Department, which provides traditional guard services and otherwise handles the Employer's security needs.

*NP Palace LLC*, 2018 WL 1782720 fn.1.

In the instant case, the only factor that the technicians share with those technicians in *Bellagio* is that they work in a casino. The technicians' responsibilities here are distinct from security functions. I am, therefore, refusing to find that the Petitioner cannot be certified as the representative of technicians on that basis.

### **B. The Employer's Request to Ban Electronic Devices in the Voting Area**

The Employer has requested that nobody be permitted to possess electronic devices in the polling area, positing that such devices could be used to pressure voters to "prove" how they voted. Section 102.64 of the Board's Rules and Regulations states that the purpose of pre-election hearings is to determine whether a question of representation exists. The Employer's request goes beyond that purpose, insofar as it raises an issue concerning the manner in which the election will be conducted. In any event, the Board agent assigned to conduct the election and the parties' observers can monitor the polling area to ensure electronic devices are not being used in a manner that will interfere with the required laboratory conditions for an election. If electronic devices are used in the polling area during the election in a manner that interferes with employees' free choice in the election, either party can raise the question of whether such conduct was objectionable in timely filed objections.

### **III. CONCLUSION**

Based upon the entire record in this matter, including the stipulations of the parties, and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>1</sup>

---

<sup>1</sup> I find, based on the stipulations of the parties and the record evidence, that the Employer, NP Sunset LLC d/b/a Sunset Station Hotel & Casino is a Nevada limited liability company with an office and place of business in Henderson, Nevada, and is engaged in the operation of a hotel and casino, providing gaming, lodging, entertainment, and dining services. During the 12-month period ending June 29, 2018, the Employer, in conducting its business operations described above, purchased and received at its facility goods valued in excess of \$5,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.<sup>2</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada.

**Excluded:** All other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.<sup>3</sup>

There are approximately 12 employees in the unit found appropriate.

#### IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers Local 501, AFL-CIO.

##### A. Election Details

The election will be held on Thursday, July 19, 2018, from 7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m. at the Employer's facility located at 1301 West Sunset Road, Henderson, Nevada, in the Sevilla Banquet Room.

##### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 1, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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<sup>2</sup> The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

<sup>3</sup> The unit found appropriate conforms with the unit sought by Petitioner. Although there is a dispute concerning whether the unit sought in the petition is inclusive of guard employees and therefore may not be represented by the Petitioner, the parties otherwise stipulated to the classifications to be included and excluded in the unit, as set forth above.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **July 17, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 13<sup>th</sup> day of July, 2018.

/s/ Cornele A. Overstreet  
Cornele A. Overstreet, Regional Director



**United States of America**  
**National Labor Relations Board**  
**NOTICE OF ELECTION**



**PURPOSE OF ELECTION:** This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

**SECRET BALLOT:** The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

**ELIGIBILITY RULES:** Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

**SPECIAL ASSISTANCE:** Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

**PROCESS OF VOTING:** Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. **DO NOT SIGN YOUR BALLOT.** Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

**CHALLENGE OF VOTERS:** If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. **DO NOT SIGN YOUR BALLOT.** Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

**AUTHORIZED OBSERVERS:** Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.





United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**VOTING UNIT**

**EMPLOYEES ELIGIBLE TO VOTE:**

All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada who were employed during the payroll period ending July 1, 2018.

**EMPLOYEES NOT ELIGIBLE TO VOTE:**



All other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.

**DATE, TIMES AND PLACE OF ELECTION**

DATE:	TIMES:	PLACE:
Thursday, July 19, 2018	7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m.	At the Employer's facility located at 1301 West Sunset Road, Henderson, Nevada, in the Sevilla Banquet Room

EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

BALLOTS WILL BE MINGLED AND COUNTED AT THE END OF THE LAST POLLING SESSION.

	<p><b>UNITED STATES OF AMERICA</b> <b>National Labor Relations Board</b> 28-RC-222992</p> <p><b>OFFICIAL SECRET BALLOT</b></p> <p>For certain employees of <b>NP SUNSET LLC D/B/A SUNSET STATION HOTEL &amp; CASINO</b></p> <p>Do you wish to be represented for purposes of collective bargaining by <b>INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO?</b></p> <p><b>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</b></p> <table border="1"><tr><td><b>YES</b> <input type="checkbox"/></td><td><b>NO</b> <input type="checkbox"/></td></tr></table> <p><b>DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.</b> If you spoil this ballot, return it to the Board Agent for a new one. The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>	<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	
<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>			



**United States of America  
National Labor Relations Board  
NOTICE OF ELECTION**



**RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:**

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

**The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.**

**If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.**

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- **Threatening loss of jobs or benefits by an Employer or a Union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

**Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.**

**Anyone with a question about the election may contact the NLRB Office at (702)388-6416 or visit the NLRB website [www.nlrb.gov](http://www.nlrb.gov) for assistance.**

**From:** [Batten, Jonathan](#)  
**To:** [Overstreet, Cornele](#); [David Rosenfeld](#); [laboradam@aol.com](mailto:laboradam@aol.com); [jsoto@local501.org](mailto:jsoto@local501.org); [Oviedo, Elise F.](#); [ML-Court-Enforcement](#)  
**Cc:** [Lipkin, Harriet](#); [Harlow, Kevin](#)  
**Subject:** In re Green Valley Ranch/Local 501 (28-CA-214925)  
**Date:** Wednesday, July 18, 2018 10:51:10 AM  
**Attachments:** [GVR Motion to Strike Response \(28-CA-214925\).pdf](#)  
[Motion to Strike Exhibits \(28-CA-214925\).pdf](#)

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Please see the attached, filed today with the NLRB in the above-captioned matter. Thank you.

[Please consider the environment before printing this email.](#)

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**STATION GVR ACQUISITION, LLC d/b/a  
GREEN VALLEY RANCH RESORT SPA CASINO**

**and**

**Case 28-CA-214925**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**MOTION TO STRIKE CHARGING PARTY'S RESPONSE**

Pursuant to National Labor Relations Board ("Board") Rule 102.24(b), Respondent Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino ("GVR") hereby moves to strike the "Response to Opposition and to Motion to Strike Joinder in Motion for Summary Judgment and Request for Remedies" ("Response") filed by the Charging Party International Union of Operating Engineers Local 501, AFL-CIO ("Union") in the above-captioned matter.

The Union's churlish, offensive, and utterly inappropriate Response is based on the completely and provably false premise that GVR somehow knew or should have known that the Union had withdrawn its Joinder Motion, which the Union claims it filed erroneously in this case. Contrary to the Union's absurd contentions, the only indications GVR had were that the Joinder Motion was filed and pending before the Board. On July 2, 2018, counsel for GVR received a signed copy of Union's Joinder Motion with a cover e-mail from Union counsel's secretary indicating that it was filed. Exhibit 1. On that same day, counsel for GVR received electronic notice from the Board indicating that the Union's Motion had been e-filed with the Board. Exhibit 2. Indeed, until receiving the Union's Response, GVR was never notified by

counsel for the Union or the Board that the underlying Joinder Motion was withdrawn and/or not filed. The Union makes an especially egregious blame-shifting argument that GVR is in some way at fault for not consulting the Board's online docket. Even accepting the ludicrous notion that a filing party can disclaim all responsibility of notifying adverse parties of a mistaken filing and that it is instead incumbent on an adverse party to confirm and reconfirm that a document was actually filed and not withdrawn, the Board's website itself cautions against any reliance on its docket, explicitly noting, "Docket Activity list does not reflect all actions in this case."

As the Response appears to be nothing more than a bad faith excuse for the Union to hurl baseless and unprofessional invective and accusations at GVR, the Union's Response, and its patently false and offensive allegations, should be stricken in its entirety as meritless, abusive and inappropriate.

Date: July 18, 2018

Respectfully Submitted,

/s/ Harriet Lipkin

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619.699.2700  
Kevin.Harlow@dlapiper.com

Attorneys for Employer,  
STATION GVR ACQUISITION d/b/a GREEN  
VALLEY RANCH RESORT SPA CASINO

**CERTIFICATE OF SERVICE**

I hereby certify this 18th day of July, 2018, that a copy of the Motion to Strike Charging Party's Response was served via email and first class mail to:

Cornele A. Overstreet  
National Labor Relations Board, Region 28  
2600 North Central Avenue – Suite 1400  
Phoenix, AZ 85004  
Cornele.Overstreet@nlrb.gov

Jose Soto, Director of Organizing  
International Union of Operating  
Engineers,  
Local 501  
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Elise Oviedo  
National Labor Relations Board, Region 28  
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Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570  
[appellatecourt@nlrb.gov](mailto:appellatecourt@nlrb.gov)

/s/ Jonathan Batten  
Jonathan Batten  
An Employee of DLA Piper LLP (US)

# **EXHIBIT 1**

---

**From:** Karen Kempler <[KKempler@unioncounsel.net](mailto:KKempler@unioncounsel.net)>  
**Sent:** Monday, July 2, 2018 6:11 PM  
**To:** Harlow, Kevin; Lipkin, Harriet; [laboradam@aol.com](mailto:laboradam@aol.com); [elise.oviedo@nlrb.gov](mailto:elise.oviedo@nlrb.gov)  
**Cc:** David Rosenfeld  
**Subject:** Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort and Spa Casino, 28-CA-214925

[EXTERNAL MESSAGE]

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Attached please find the Joinder in Motion for Summary Judgment and Request for Remedies we filed today with the Executive Secretary of the NLRB.

*Karen Kempler*  
opeiu29 afl-cio(1)  
**Secretary to David A. Rosenfeld**  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway  
Alameda, CA 94501-1091  
510-337-1001 Phone  
510-337-1023 Fax  
[kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net)

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Attorneys for the Union, INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501, AFL-CIO

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 28

STATION GVR ACQUISITION, LLC D/B/A  
GREEN VALLEY RANCH RESORT AND  
SPA CASINO ,

And

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO,

Case 28-CA-214925

**JOINDER IN MOTION FOR  
SUMMARY JUDGMENT AND  
REQUEST FOR REMEDIES**

The Charging Party hereby joins in the General Counsel's Motion to Transfer to the Board and for Summary Judgment.

The Charging Party requests additional appropriate and necessary remedies:

1. Any Board Notice should be posted for the length of time between when the unfair labor practice began and when the Notice is posted;
2. The employer should be directed to provide signed copies of the Board's Notice to the Union so the Union can post the Notice;

3. The Notice should be revised to add at the top: “We have violated federal law by refusing to bargain with Operating Engineers Local 501. We have additionally refused to provide information which the Union needs to bargain. We have agreed to remedy this violation by bargaining retroactively to the date that the election was conducted. We have agreed to provide the information requested and other remedies”;

4. The employees should be afforded four hours of paid time to read and review the Board’s Order and remedy;

5. The Board’s Notice should be read by a responsible employer official in the presence of a Union representative; and

6. Copies of the Board Decision should be provided by the employer to all employees within the bargaining from the date of the election to the date of posting.

7. The Board’s decision to be mailed to all employees who worked in the unit but who are no longer employed.

For these reasons, the General Counsel’s motion should be granted promptly with the additional remedies requested by the Charging Party.

Dated: July 2, 2018

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for the Union, INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL 501, AFL-CIO

145074\975347

## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On July 2, 2018, I served the following documents in the manner described below:

### JOINDER IN MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR REMEDIES

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

Kevin Harlow, Esq.  
DLA Piper LLC (US)  
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Adam N. Stern, Esq.  
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Harriet Lipkin, Esq.  
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Elise Oviedo  
National Labor Relations Board  
300 S. Las Vegas Blvd. Suite 2-901  
Las Vegas, NV 89101  
[Elise.Oviedo@nlrb.gov](mailto:Elise.Oviedo@nlrb.gov)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 2, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler

## **EXHIBIT 2**

**From:** [e-service@service.nlr.gov](mailto:e-service@service.nlr.gov) [<mailto:e-service@service.nlr.gov>]  
**Sent:** Monday, July 02, 2018 6:16 PM  
**To:** Lipkin, Harriet  
**Subject:** FW: 28-CA-214925

[EXTERNAL MESSAGE]

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This is notification that a document has been E-Filed with the Office of Executive Secretary of the National Labor Relations Board in the above referenced case. This email is being sent to you as a courtesy because you have registered for the Agency's E-Issuance/E-Service Pilot Program.

**\*\* PLEASE NOTE:** This e-mail is a courtesy only and does not constitute service of the document on you by the filing party. In addition, this e-mail indicates only that the document has been E-Filed with the Agency. It does not constitute a determination that the document has been accepted by the Agency as meeting the requirements for filing.

You can access the document(s) filed on 7/2/2018 in case 28-CA-214925 by clicking on the link(s) below:

[Brief/Memorandum in Support of Motion for Summary Judgment](#)

Thank you for participating in the E-Issuance/E-Service pilot program.

National Labor Relations Board

**From:** (b) (6), (b) (7)(C)  
**To:** [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com); [kevin.harlow@dlapiper.com](mailto:kevin.harlow@dlapiper.com); [Overstreet, Cornele](#); [laboradam@aol.com](mailto:laboradam@aol.com); [Oviedo, Elise F.](#)  
**Cc:** [David Rosenfeld](#)  
**Subject:** Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO, 28-CA-211043  
**Date:** Wednesday, July 25, 2018 7:29:21 PM  
**Attachments:** [Response to Motion to Strike Charging Party's Joinder 28-CA-211043.pdf](#)  
[Response to Motion to Strike Charging Party's Joinder to Motion for Summary Judgment 28-CA-211043.pdf](#)

---

Attached please find the Response to Motion to Strike Joinder in Motion for Summary Judgment we filed today with the Executive Secretary.

(b) (6), (b) (7)(C)  
opeiu29 afl-cio(1)  
(b) (6), (b) (7)(C) **David A. Rosenfeld**  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway  
Alameda, CA 94501-1091  
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DAVID A. ROSENFELD, Bar No. 058163  
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Fax (510) 337-1023  
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Attorneys for Union INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501, AFL-CIO

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 28

STATION GVR ACQUISITION, LLC d/b/a  
GREEN VALLEY RANCH RESORT SPA  
CASINO,

Employer,

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO,

Union.

No. 28-CA-211043

**RESPONSE TO MOTION TO STRIKE  
CHARGING PARTY'S JOINDER**

The Charging Party doesn't seek any extraordinary remedies. Rather, what we seek are what should be the normal remedies for the kind of economic terrorism engaged in by this employer.

The workers voted overwhelmingly to be represented by Local 501. They exercised their democratic choice.

We thought we were living in a democracy. No. No! When the workers vote overwhelmingly for a union, the employer decides to violate the law and refuses to bargain with the Union chosen by the workers.

The employer is, in effect, an economic terrorist because he continues to exact huge profits while refusing to meet reasonable demands of its employees.

The employer's immorality and lack of ethics is further demonstrated by its reference to another matter involving what it calls "a technical refusal to bargain ..." There is nothing technical about it. It's a violation of the law.

Putting that aside, the circumstances of the case to which it refers are considerably different. And, in any case, the Ninth Circuit denied the motion to dismiss and referred the matter to the Merits Panel. See Exhibit A. In the meantime, the matter has been referred to the Judicial Panel on Multidistrict Litigation which has transferred the cases to the Ninth Circuit Court of Appeals.

The Motion to Strike the Charging Party's Joinder should be denied.

Dated: July 25, 2018

Organize!

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for Union INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL 501,  
AFL-CIO

145074\978825



# **EXHIBIT A**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUL 18 2018

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

INTERNATIONAL UNION OF  
OPERATING ENGINEER LOCAL 501,  
AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

STATION GVR ACQUISITION, LLC,  
d/b/a Green Valley Ranch Resort Spa  
Casino,

Respondent-Intervenor.

No. 18-71124

NLRB No. 28-CA-214925  
National Labor Relations Board

ORDER

Before: TASHIMA and GRABER, Circuit Judges.

The amended motion to dismiss this appeal for lack of jurisdiction (Docket Entry Nos. 9, 10) is denied without prejudice to renewing the arguments in the answering brief. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss).

The opening briefs and excerpts of record are due September 17, 2018; the answering brief is due October 17, 2018; and the optional reply briefs are due within 21 days after service of the answering brief.

## **PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On July 25, 2018, I served the following documents in the manner described below:

### **RESPONSE TO MOTION TO STRIKE CHARGING PARTY'S JOINDER**

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

On the following part(ies) in this action:

Ms. Harriet Lipkin  
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500 Eighth Street, N.W.  
Washington, D.C. 20004  
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Mr. Kevin Harlow  
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San Diego, CA 92101  
[kevin.harlow@dlapiper.com](mailto:kevin.harlow@dlapiper.com)

Mr. Cornele Overstreet  
Regional Director  
National Labor Relations Board, Region 28  
2600 North Central Avenue, Suite 1400  
Phoenix, AZ 85004  
[cornele.overstreet@nrlb.gov](mailto:cornele.overstreet@nrlb.gov)

Mr. Adam Stern  
The Myers Law Group  
9327 Fairway View Place, Suite 100  
Rancho Cucamonga, CA 91730  
[Laboradam@aol.com](mailto:Laboradam@aol.com)

Ms. Elise Oviedo  
National Labor Relations Board, Region 28  
300 Las Vegas Boulevard, Suite 2-901  
Las Vegas, NV 89101-5833  
[elise.oviedo@nrlb.gov](mailto:elise.oviedo@nrlb.gov)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 25, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler

DAVID A. ROSENFELD, Bar No. 058163  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
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Attorneys for Union INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501, AFL-CIO

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 28

STATION GVR ACQUISITION, LLC d/b/a  
GREEN VALLEY RANCH RESORT SPA  
CASINO,

Employer,

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO,

Union.

No. 28-CA-211043

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The Motion to Strike the Charging Party's Joinder should be denied.

Dated: July 25, 2018

Organize!

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# **EXHIBIT A**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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JUL 18 2018

MOLLY C. DWYER, CLERK  
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INTERNATIONAL UNION OF  
OPERATING ENGINEER LOCAL 501,  
AFL-CIO,

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v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

STATION GVR ACQUISITION, LLC,  
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Casino,

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No. 18-71124

NLRB No. 28-CA-214925  
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The opening briefs and excerpts of record are due September 17, 2018; the answering brief is due October 17, 2018; and the optional reply briefs are due within 21 days after service of the answering brief.

## **PROOF OF SERVICE**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On July 25, 2018, I served the following documents in the manner described below:

### **RESPONSE TO MOTION TO STRIKE CHARGING PARTY'S JOINDER**

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

On the following part(ies) in this action:

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300 Las Vegas Boulevard, Suite 2-901  
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 25, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler

**From:** (b) (6), (b) (7)(C)  
**To:** [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com); [laboradam@aol.com](mailto:laboradam@aol.com); [Doyle, Christopher J.](#); [Overstreet, Cornele](#)  
**Cc:** [David Rosenfeld](#)  
**Subject:** NP Palace LLC dba Palace Staton Hotel & Casino and Operating Engineers Local 501, 28-CA-215326  
**Date:** Wednesday, August 8, 2018 5:37:07 PM  
**Attachments:** [Opposition to Motion to Reschedule Hearing 28-CA-215326.pdf](#)

---

Attached please find the Opposition to Motion to Reschedule Hearing we filed today with the NLRB.

(b) (6), (b) (7)(C)

opeiu29 afl-cio(1)

(b) (6), (b) (7)(C) **to David A. Rosenfeld**

Weinberg, Roger & Rosenfeld

1001 Marina Village Parkway

Alameda, CA 94501-1091

510-337-1001 Phone

510-337-1023 Fax

(b) (6), (b) (7)(C) [@unioncounsel.net](mailto:unioncounsel.net)

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Attorneys for Union INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501, AFL-CIO

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 28

NP PALACE LLC d/b/a PALACE STATION  
HOTEL & CASINO,

Employer,

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO,

Union.

No. 28-CA-215326

**OPPOSITION TO MOTION TO  
RESCHEDULE HEARING**

International Union of Operating Engineers Local 501 opposes any effort to delay the statutory rights of employees. This case should be moved up rather than back. Delay only facilitates the employer's efforts to sabotage employee rights.

Dated: August 8, 2018

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:

/s/ David A. Rosenfeld

DAVID A. ROSENFELD

Attorneys for Union INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL 501,  
AFL-CIO

145427\981267

## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On August 8, 2018, I served the following documents in the manner described below:

### OPPOSITION TO MOTION TO RESCHEDULE HEARING

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 8, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler

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**To:** [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com); [laboradam@aol.com](mailto:laboradam@aol.com); [Doyle, Christopher J.](#); [Overstreet, Cornele](#)  
**Cc:** [David Rosenfeld](#)  
**Subject:** NP Palace LLC d/b/a Palace Station Hotel & Casino and International Union of Operating Engineers Local 501, Case 28-CA-215326  
**Date:** Friday, August 17, 2018 5:59:30 PM  
**Attachments:** [Objection to NP Palace Motion to Reschedule Hearing. 28-CA-215326.pdf](#)

---

Attached please find the Objection to Motion to Reschedule Hearing we filed today with the NLRB.

(b) (6), (b) (7)(C)

opeiu29 afl-cio(1)

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UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 28

NP PALACE LLC d/b/a PALACE STATION  
HOTEL & CASINO,

Employer,

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO,

Union.

No. 28-CA-215326

**OBJECTION TO MOTION TO  
RESCHEDULE HEARING**

The employer is seeking to undermine and sabotage employee rights further by delay.  
The Region should move the case up. The employer is claiming that it needs counsel who is  
familiar is ridiculous since this is a test of certification.

For these reasons, the Motion should be denied except to the extent that the hearing date  
is moved up.

Dated: August 17, 2018

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for Union INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL 501,  
AFL-CIO

145427\983080

## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 17, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler



**From:** [Moore, Dawn M.](#)  
**To:** [Lipkin, Harriet](#); [drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net); [jsoto@local501.org](mailto:jsoto@local501.org)  
**Subject:** NP Sunset LLC d/b/a Sunset Station Hotel Casino - Case 28-CA-225263  
**Date:** Monday, August 27, 2018 1:42:45 PM  
**Attachments:** [image001.png](#)  
[CPT.28-CA-225263.Complaint and Notice of Hearing 8-27-18.pdf](#)

---

Please see the attached Complaint and Notice of Hearing.

*Dawn M. Moore*

Administrative Assistant  
Region 28 – Las Vegas Resident Office  
National Labor Relations Board  
Foley Federal Building  
300 Las Vegas Boulevard South, Suite 2-901  
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NATIONAL LABOR  
RELATIONS BOARD



*Save a tree ~ Don't print me!*



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC d/b/a  
SUNSET STATION HOTEL CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by the International Union of Operating Engineers Local 501, AFL-CIO (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that NP Palace LLC d/b/a Palace Station Hotel & Casino (Respondent), has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on August 9, 2018, and a copy was served on Respondent by U.S. mail on the same date.
2. (a) At all material times, Respondent has been a limited liability company with an office and place of business in Henderson, Nevada (Respondent's facility), and has been engaged in operating a hotel casino.
  - (b) During the 12-month period ending August 9, 2018, Respondent in conducting its operations described above in paragraph 2(a), purchased and received at Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Nevada.

(c) In conducting its operations during the 12-month period ending August 9, 2018, Respondent derived gross revenues in excess of \$500,000.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) At all material times, Valerie Murzl has held the position of Corporate Vice President of Human Resources and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times, Respondent's counsel have been agents of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada; excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.

(b) On July 19, 2018, a representation election was conducted among employees in the Unit and, on August 1, 2018, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since July 19, 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(d) Since about July 26, 2018, the Union has requested that Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(e) Since about July 27, 2018, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(f) On about July 26, 2018, the Union requested in writing that Respondent furnish the Union with the following information:

1. A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and Social Security number.
2. A copy of all current company personnel policies, practices or procedures.
3. A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
4. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees.
5. Copies of all current job descriptions.
6. Copies of any company wage or salary plans.
7. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year. A copy of all witness statements for any such discipline.
8. A statement and description of all wage and salary plans which are not provided under number 6 above.

(g) The information requested by the Union, as described above in paragraph 5(f), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(h) Since about July 27, 2018, Respondent, by its counsel, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 5(f).

6. By the conduct described above in paragraph 5, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

7. The unfair labor practice of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### **ANSWER REQUIREMENT**

The Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to this complaint. The answer must be **received by this office on or before September 10, 2018, or postmarked on or before September 8, 2018.** Respondent should file an original copy of the answer with this office. Respondent should serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlrb.gov](http://www.nlrb.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical

failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** on a date and at a time to be determined, at the Hearing Room, National Labor Relations Board, 300 Las Vegas Boulevard South, Suite 2-901, Las Vegas, Nevada, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to

be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 27<sup>th</sup> day of August 2018.

/s/ *Cornele A. Overstreet*  
Cornele A. Overstreet, Regional Director

Attachments

**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE**

Case 28-CA-225263

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
1301 West Sunset Road  
Henderson, NV 89014

Harriet Lipkin, Partner  
DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004

International Union of Operating Engineers  
Local 501, AFL-CIO  
301 South Deauville Street  
Las Vegas, NV 89106

David A. Rosenfeld, Esquire  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-6430



## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**From:** (b) (6), (b) (7)(C)  
**To:** [Oureshi, Farah Z.](#); [Dreeben, Linda J.](#); [Overstreet, Cornele](#); [Oviedo, Elise F.](#); [Robb, Peter](#); [harriet.lipkin@dlapiper.com](#); [kevin.harlow@dlapiper.com](#); [laboradam@aol.com](#)  
**Cc:** [David Rosenfeld](#)  
**Subject:** IUOE, Local 501 v. NLRB Case No.: 18-72434  
**Date:** Tuesday, September 4, 2018 7:26:15 PM  
**Attachments:** [10999982-3 Petition for Review of IUOE, Local 501.pdf](#)

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Attached please find the Petition for Review filed today.

(b) (6), (b) (7)(C), OPEIU 29 AFL-CIO(1)  
(b) (6), (b) (7)(C) to David A. Rosenfeld, Eric J. Wiesner  
and Michael D. Burstein  
**WEINBERG ROGER & ROSENFELD**  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-1091  
Telephone: 510.337.1001, Ext (b) (6), (b) (7)(C)  
Facsimile: 510.337.1023  
Email: (b) (6), (b) (7)(C)@unioncounsel.net

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
\_\_\_\_\_

INTERNATIONAL UNION OF OPERATION ENGINEERS LOCAL 501,  
AFL-CIO,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

\_\_\_\_\_  
ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD  
CASE NO. 366 NLRB NO. 175, CASES 28-CA-211043 AND 28-216411  
\_\_\_\_\_

PETITION FOR REVIEW OF INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501, AFL-CIO  
\_\_\_\_\_

David A. Rosenfeld, Bar No. 058163  
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A Professional Corporation  
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Telephone (510) 337-1001  
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*Attorneys for Petitioner,* INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO

International Union of Operating Engineers Local 501, AFL-CIO hereby petitions for review from the Board Decision and Order of the National Labor Relations Board, entitled *Station GRV Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO*, issued as Case 377 NLRB No. 175. A copy of the Board's Decision and Order is attached as Exhibit A.

Dated: September 4, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ DAVID A. ROSENFELD  
David A. Rosenfeld

Attorneys for Petitioner  
INTERNATIONAL UNION OF  
OPERATION ENGINEERS LOCAL 501,  
AFL-CIO

145857\984877



### **CERTIFICATE OF SERVICE**

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I certify that on September 4, 2018, the **PETITION FOR REVIEW OF INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO** was served on all parties or their counsel of record by electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kshaw@unioncounsel.net](mailto:kshaw@unioncounsel.net) to the email addresses set forth below:

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National Labor Relations Board  
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*Office of Executive Secretary of National  
Labor Relations Board*

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National Labor Relations Board  
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*National Labor Relations Board*

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laboradam@aol.com

*International Union of Operating Engineers  
Local 501, AFL-CIO*

I certify that the above is true and correct. Executed at Alameda, California,  
on September 4, 2018.

/s/ Katrina Shaw  
Katrina Shaw

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*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO.** Case 28-CA-211043 and 28-CA-216411

August 27, 2018

**DECISION AND ORDER**

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

The General Counsel seeks partial summary judgment in this case on the grounds that there are no genuine issues of material fact as to certain allegations in the complaint, and that the Board should find, as a matter of law, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of a unit of the Respondent's employees.<sup>1</sup>

Pursuant to charges filed by the Union on December 5, 2017, and March 8, 2018, and an amended charge filed on March 22, 2018, the General Counsel issued a consolidated complaint (complaint) on April 27, 2018.<sup>2</sup> The complaint alleges, among other things, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information. The Respondent filed an answer admitting in part and denying in part the allegations of the complaint.

Thereafter, on April 12, the Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment in a related refusal-to-bargain case in which the Respondent contested the Union's certification in Case 28-RC-203653 as the bargaining representative of the employee unit at issue in this proceeding. *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58 (2018).<sup>3</sup> In that case, the Board found that since November 6, 2017, the Respondent violated Section 8(a)(5) and (1) by failing and refusing to recognize and bargain with the Union. *Id.*, slip op. at 2. On April 13, the Respondent filed a Petition for Review of the Board's April 12 Order, which

<sup>1</sup> The General Counsel does not seek summary judgment with respect to allegations, in pars. 6(f) through 6(j) of the complaint, that the Respondent violated Sec. 8(a)(5) and (1) of the Act by changing the amount of notice given to bargaining unit employees when their work schedules are changed.

<sup>2</sup> All subsequent dates are in 2018, unless otherwise indicated.

<sup>3</sup> On May 17, the Board issued an Order denying the Union's Motion for Reconsideration of the Board's April 12 Decision and Order. *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 91 (2018).

is pending before the United States Court of Appeals for the District of Columbia Circuit.

On May 8, the General Counsel filed a Motion for Partial Summary Judgment in the current proceeding. On May 14, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. The Union filed a Joinder in Motion for Summary Judgment and Request for Additional Remedies, the Respondent filed an opposition to the Union's Motion and request for additional remedies, and the Union filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Partial Summary Judgment**

At paragraph 6(a) of the complaint, the General Counsel alleges that about November 6, 2017, the Union requested the following information from the Respondent:

1. A list of current employees including their names, dates of hire, rates of pay, job classifications, last known address, phone number, date of completion of any probationary period, and social security number;
2. Copies of all current job descriptions;
3. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last 24 months;
4. A copy of all company fringe benefit plans including retirement, sick time, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, education, legal services, child care or any plans which relate to the employees;
5. Copies of any company wage or salary plans;
6. A copy of all current company personnel policies, practices and procedures;
7. Copies of all contract agreements related with Property Management and/or owner(s);
8. Copies of all Covenants, Conditions and Restrictions (CCM and/or any additional information related to said agreements in the above[]); and
9. Complete Enclosed Employer Contact Information Request Form (E411).

Complaint paragraph 6(b) alleges that since March 8, 2018, the Union requested the following information from the Respondent:

1. Please provide your policy and procedures in regards to slot tournaments;



2. How often are slot tournaments held at Green Valley Ranch Hotel and Casino;
3. What type of notice is provided for special projects, like slot tournaments; and
4. What are the safety policies in regards to installs, conversions and preventative maintenance to slot machines when tournaments take place.

In addition, the complaint alleges that since November 6, 2017, and March 8, 2018, respectively, the Respondent has failed and refused to furnish the Union with the information described in paragraphs 6(a) and 6(b), and that by the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith in violation of Section 8(a)(5) and (1) of the Act.

In its answer, the Respondent admits its refusal to furnish the information, but continues to contest the validity of the certification on the basis of the issues raised and decided by the Board in the underlying representation proceeding. In its response to the Notice to Show Cause, the Respondent further contends that the requested information is not limited to bargaining unit employees and there is no showing of the necessity and relevance of the information as it relates to nonunit employees. With respect to the unit employees, the Respondent asserts that the requested social security numbers are not presumptively relevant and there has been no showing of the necessity of such information. In addition, the Respondent contends that certain requested items, including wage and salary plans, policies related to the security and integrity of the Respondent's gaming machines, information about terms negotiated with third party vendors, and precautions taken to combat illegal gaming and money laundering, are confidential and require a trier of fact to balance the Union's need for the information with the Respondent's confidentiality interests.

With respect to the arguments contesting the Union's certification, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not suggest there is any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We further find that there are no factual issues warranting a hearing with respect to most of the items in the

Union's information request.<sup>4</sup> Specifically, with the exceptions of the request for employee social security numbers,<sup>5</sup> contract agreements related with property management and/or owner(s), and the covenants, conditions and restrictions,<sup>6</sup> the type of information requested by the Union is presumptively relevant for purposes of collective bargaining and the Respondent has not asserted any basis for rebutting the presumptive relevance. See, e.g., *CVS Albany, LLC d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enfd. mem. 709 Fed. Appx. 10 (D.C. Cir. 2017) (per curiam), and *Metro Health Foundations, Inc.*, 338 NLRB 802, 803 (2003). With respect to the Respondent's claims of confidentiality, "the confidentiality claim must be timely raised . . . and a blanket claim of confidentiality will not satisfy [its] burden of proof." *Mission Foods*, 345 NLRB 788, 791 (2005). Here, in its response to the Notice to Show Cause, the Respondent for the first time asserted nothing more than a blanket claim of confidentiality, without any contention that it has made any offer to accommodate the Union's legitimate interest in relevant information. As such, the Respondent's assertion of confidentiality does not excuse its failure to furnish any of the requested information.

Accordingly, we grant the Motion for Partial Summary Judgment with the exceptions of the allegations concerning the Union's request for social security numbers and its request for the information described in paragraphs 6(a) 7 and 6(a) 8 of the complaint.

On the entire record, the Board makes the following

<sup>4</sup> The Respondent's contention, that the information request is not specifically limited to bargaining unit employees, does not justify its blanket refusal to comply with the information request. *DIRECTV U.S. DIRECTV Holdings LLC*, 361 NLRB No. 124, slip op. at 2 (2014). However, in accordance with well-established precedent, to the extent the Union's information request could be construed covering both unit and nonunit employees, it shall be construed as pertaining to unit employees' terms and conditions of employment. See *Id.*; *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003).

<sup>5</sup> The Board has held that employee social security numbers are not presumptively relevant and that the requesting union must demonstrate the relevance of such information. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (per curiam). Here the Union's request did not specify why it wanted this information and the Union has not otherwise demonstrated its relevance. See *Pallet Cos.*, 361 NLRB 339, 340 fn. 4 (2014), enfd. mem. 634 Fed. Appx. 800 (D.C. Cir. 2015) (per curiam). We therefore deny summary judgment as to this item and remand this issue to the Region for further appropriate action.

<sup>6</sup> The requests for contract agreements and for covenants, conditions and restrictions appear to seek information about matters outside the bargaining unit and, as such, are not presumptively relevant. See *KIRO, Inc.*, 317 NLRB 1325, 1328 (1995) (information with respect to commercial transactions between the respondent and other company not presumptively relevant). Therefore, we deny summary judgment with respect to those items and remand those issues to the Regional Director for further appropriate action.



## FINDINGS OF FACT

## I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Henderson, Nevada, and has been engaged in operating a hotel and casino.

In conducting its operations during the 12-month period ending December 5, 2017, the Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Sheila Lee and Valerie Mural, the Respondent's senior vice president of human resources, have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.<sup>7</sup>

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and extra board slot technicians and utility technicians employed by the Employer at its Henderson, Nevada facility, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

At all times since October 16, 2017, the Union has been certified as the exclusive collective-bargaining representative of the employees in the above-referenced unit under Section 9(a) of the Act.

About November 6, 2017, and March 8, 2018, the Union requested that the Respondent furnish information described above to the Union, and the Respondent failed and refused to furnish the requested information. With the exceptions of social security numbers, contract agreements, and the covenants, conditions and restrictions, the requested information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, and the Respondent's failure to furnish this information constitutes an unlawful refusal to bargain collectively

<sup>7</sup> In its answer, the Respondent denies the complaint allegation that Sheila Lee is its director of human resources, but admits that Lee is a supervisor and an agent within the meaning of the Act.

with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since about November 6, 2017, and March 8, 2018, to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondents' unit employees, we shall order the Respondents to furnish the Union with information requested November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with Property Management and/or owner(s), and copies of covenants, conditions and restrictions, (CCM and/or any additional information related to said agreements in the above).<sup>8</sup>

The Union requests additional enhanced remedies.<sup>9</sup> Contrary to the Union's assertions, there has been no showing that the Board's traditional remedies are insufficient to redress the information request violations committed by the Respondent. Accordingly, we deny the Union's request for additional remedies.

## ORDER

The National Labor Relations Board orders that the Respondent, Station GVR Acquisition, LLC d/b/a Green

<sup>8</sup> The General Counsel has requested that the initial certification year be extended to begin on the date that the Respondent commences to bargain in good faith with the Union. Because this same remedy was requested and granted in our previous decision, it is unnecessary to order it here again. *Station GVR Acquisition, LLC*, 366 NLRB No. 58, slip op. at 2.

<sup>9</sup> Because the Union has not shown that the traditional remedies are inadequate, we find it unnecessary to pass on the Respondent's motion to strike.



Valley Ranch Resort Spa Casino, Henderson, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Union of Operating Engineers Local 501, AFL-CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondents' unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

(b) Within 14 days after service by the Region, post at its facility in Henderson, Nevada, copies of the attached notice marked "Appendix."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 6, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the

Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is denied with respect to the allegation concerning social security numbers in paragraph 6(a)(1) of the complaint, and to the allegations in paragraphs 6(a)7 and 8 of the complaint, and that these allegations are remanded to the Regional Director for Region 28 for further appropriate action.

Dated, Washington, D.C. August 27, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the International Union of Operating Engineers Local 501, AFL-CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

<sup>10</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

STATION GVR ACQUISITION, LLC D/B/A GREEN VALLEY RANCH RESORT SPA CASINO

5

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

STATION GVR ACQUISITION, LLC D/B/A  
GREEN VALLEY RANCH RESORT SPA  
CASINO

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-211043> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**From:** (b) (6), (b) (7)(C)  
**To:** [Oureshi, Farah Z.](#); [Dreeben, Linda J.](#); [Overstreet, Cornele](#); [Oviedo, Elise F.](#); [Robb, Peter](#); [harriet.lipkin@dlapiper.com](#); [kevin.harlow@dlapiper.com](#); [laboradam@aol.com](#)  
**Cc:** [David Rosenfeld](#)  
**Subject:** International Union of Operation Engineers Local 501, AFL-CIO v. NLRB - Case No. 18-72434  
**Date:** Wednesday, September 5, 2018 1:15:52 PM  
**Attachments:** [DOCSNT-#985347-v1-NOTICE\\_OF\\_RELATED\\_CASES.pdf](#)

---

Attached for your records please find the Notice of Related Cases filed today.

(b) (6), (b) (7)(C) **OPEIU 29 AFL-CIO(1)**  
(b) (6), (b) (7)(C) o David A. Rosenfeld, Eric J. Wiesner  
and Michael D. Burstein  
**WEINBERG ROGER & ROSENFELD**  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-1091  
Telephone: 510.337.1001, Ext. (b) (6)  
Facsimile: 510.337.1023  
Email (b) (6), (b) (7)(C) [@unioncounsel.net](#)

**CASE NO. 18-72434**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

**INTERNATIONAL UNION OF OPERATION ENGINEERS LOCAL 501,  
AFL-CIO,**

Petitioner,

**v.**

**NATIONAL LABOR RELATIONS BOARD,**

Respondent.

---

**ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD  
CASE NO. 366 NLRB NO. 175, CASES 28-CA-211043 AND 28-216411**

---

**NOTICE OF RELATED CASES**

---

David A. Rosenfeld, Bar No. 058163  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
1001 Marina Village Parkway, Suite 200  
Alameda, California 94501  
Telephone (510) 337-1001  
Fax (510) 337-1023

*Attorneys for Petitioner*, INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 501, AFL-CIO

Petitioner, International Union of Operating Engineers Local 501, AFL-CIO (Local 501 or Petitioner), in the above-entitled action hereby files the following Notice of Related Cases:

1. The above-captioned case is related to three other cases before this Court. They are: *International Union of Operating Engineers Local 501, AFL-CIO v. National Labor Relations Board*, Case No. 18-71124; *Station GVR Acquisition, LLC, dba Green Valley Ranch Resort Spa Casino v. National Labor Relations Board*, Case No. 18-72079; and *National Labor Relations Board v. Station GVR Acquisition, LLC, dba Green Valley Ranch Resort Spa Casino*, Case No. 18-72121. By Order of this Court, these actions were consolidated on August 21, 2018.

2. These three cases are related to the instant case because they involve the same parties and questions of law. These cases are related because, in all of them, the employer, Station GVR Acquisition dba Green Valley Ranch Resort Spa Casino (Station GVR or Respondent), has refused to bargain with Local 501 after an election and certification in favor of the Union issued. These cases are known as a test of certification.

In this case, the National Labor Relations Board has now found that the Station GVR violated the Act by refusing to provide information. Much of the information requested by Petitioner is necessary and relevant to bargaining. Station GVR's position is that it will not provide the information because it claims that it has no duty to do so because the Union was never properly served by the National Labor Relations Board. This is the issue pending in the related test of certification cases.

It should be clear from this description that this case is simply related to an outgrowth of the earlier cases and should be deemed related.

3. The three prior cases are already consolidated. They should be deemed related in order conserve judicial resources and promote an efficient determination of the appeal.

Dated: September 5, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
David A. Rosenfeld

Attorneys for Petitioner  
INTERNATIONAL UNION OF  
OPERATION ENGINEERS LOCAL 501,  
AFL-CIO

145857\985347



## CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I certify that on September 5, 2018, the **NOTICE OF RELATED CASES** was served on all parties or their counsel of record by electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kshaw@unioncounsel.net](mailto:kshaw@unioncounsel.net) to the email addresses set forth below:

Farah Qureshi  
Associate Executive Secretary  
Office of Executive Secretary (Vacant)  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20001  
[farah.qureshi@nlrb.gov](mailto:farah.qureshi@nlrb.gov)

*Office of Executive Secretary of National  
Labor Relations Board*

Cornele A. Overstreet  
Regional Director, Region 28  
National Labor Relations Board  
2600 North Central Avenue, Suite 1400  
Phoenix, AZ 95004  
[cornele.overstreet@nlrb.gov](mailto:cornele.overstreet@nlrb.gov)

*National Labor Relations Board*

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*Attorneys for Respondent National Labor  
Relations Board*

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*National Labor Relations Board*

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*National Labor Relations Board*

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[kevin.harlow@dlapiper.com](mailto:kevin.harlow@dlapiper.com)

*Attorneys for Station GVR Acquisition,  
LLC d/b/a Green Valley Ranch Resort  
and Spa Casino*

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Casino*

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[laboradam@aol.com](mailto:laboradam@aol.com)

*International Union of Operating Engineers  
Local 501, AFL-CIO*

I certify that the above is true and correct. Executed at Alameda, California,  
on September 5, 2018.

145857\985347

/s/ Katrina Shaw  
Katrina Shaw

**From:** (b) (6), (b) (7)(C)  
**To:** [Oureshi, Farah Z.](#); [Overstreet, Cornele](#); [Dreeben, Linda J.](#); [Oviedo, Elise F.](#); [Robb, Peter](#); [harriet.lipkin@dlapiper.com](#); [laboradam@aol.com](#); [kevin.harlow@dlapiper.com](#)  
**Cc:** [David Rosenfeld](#)  
**Subject:** IUOE, Local 501 and Station GVR Acquisition, et al. - Case No.: 18-72434, et al.  
**Date:** Wednesday, September 5, 2018 8:24:16 PM  
**Attachments:** [DOCSNT-#985332-v1-Station GVR - Motion to Consolidate.pdf](#)

---

Attached for your records please find the Motion to Consolidate Cases filed today.

(b) (6), (b) (7)(C) **OPEIU 29 AFL-CIO(1)**  
(b) (6), (b) (7)(C) David A. Rosenfeld, Eric J. Wiesner  
and Michael D. Burstein  
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Facsimile: 510.337.1023  
(b) (6), (b) (7)(C) [@unioncounsel.net](#)

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL  
501 AFL-CIO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO,

Intervenor.

CASE NO. 18-71124

Board Case No. 28-CA-214925

STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

Case No. 18-72079

Board Case No. 28-CA-214925

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

and

STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO,

Respondent.

Case No. 18-72121

Board Case No. 28-CA-214925

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL  
501 AFL-CIO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent.

Case No. 18-72434

Board Case No. 28-CA-211043 and  
28-CA-216411

### **MOTION TO CONSOLIDATE CASES**

The Petitioner in case 18-71124 and the Petitioner in case 18-72434, the International Union of Operating Engineers hereby moves this Court for an Order consolidating these cases.

This consolidation is appropriate because the first case involves the employer's refusal to bargain with the Charging Party after certification in favor of the Charging Party issued. This is known as a test of certification.

The more recently filed case is part of that test of certification. In a separate proceeding, the Board has now found that the Board violated the Act by refusing to provide information to the Charging Party as part of bargaining and representation of the employees. Much of the information needed by the Charging Party is necessary and relevant to bargaining. The employer's position is that it will not provide any information because it claims that it has no duty to do so because the Union was never properly certified by the Board. This is the issue pending in the earlier test of certification case.

It should be clear from this description that the more recent case is directly related to an outgrowth of the earlier case and should be consolidated for briefing and all purposes.

For these reasons, the Court should consolidate these cases.

Dated: September 5, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ DAVID A. ROSENFELD  
DAVID A. ROSENFELD

Attorneys for INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL  
501 AFL-CIO

DAVID A. ROSENFELD, Bar No. 058163  
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## CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I certify that on September 5, 2018, the **MOTION TO CONSOLIDATE CASES** was served on all parties or their counsel of record by electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kshaw@unioncounsel.net](mailto:kshaw@unioncounsel.net) to the email addresses set forth below:

Farah Qureshi  
Associate Executive Secretary  
Office of Executive Secretary (Vacant)  
National Labor Relations Board  
1015 Half Street SE  
Washington, D.C. 20001  
[farah.qureshi@nrlrb.gov](mailto:farah.qureshi@nrlrb.gov)

*Office of Executive Secretary of National  
Labor Relations Board*

Cornele A. Overstreet  
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National Labor Relations Board  
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*National Labor Relations Board*

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*National Labor Relations Board*

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LLC d/b/a Green Valley Ranch Resort  
and Spa Casino*

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Casino*

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[laboradam@aol.com](mailto:laboradam@aol.com)

*International Union of Operating Engineers  
Local 501, AFL-CIO*

I certify that the above is true and correct. Executed at Alameda, California, on  
September 5, 2018.

/s/ Katrina Shaw  
Katrina Shaw



**From:** (b) (6), (b) (7)(C)  
**To:** [Oureshi, Farah Z.](#); [Dreeben, Linda J.](#); [Overstreet, Cornele](#); [Oviedo, Elise F.](#); [Robb, Peter](#); [harriet.lipkin@dlapiper.com](#); [Stanley.panikowski@dlapiper.com](#); [laboradam@aol.com](#)  
**Cc:** [David Rosenfeld](#)  
**Subject:** Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino v. NLRB, Case 18-1236  
**Date:** Monday, September 10, 2018 4:44:55 PM  
**Attachments:** [Motion to Intervene Station GVR, 18-1236.pdf](#)  
[Corporate Disclosure Statement, Station GVR 18-1236.pdf](#)

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Attached please find the Motion to Intervene and Corporate Disclosure Statement we filed today with the United States Court of Appeals for the D.C. Circuit.

(b) (6), (b) (7)(C)

opeiu29 afl-cio(1)

(b) (6), (b) (7)(C) **David A. Rosenfeld**

Weinberg, Roger & Rosenfeld  
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*This message contains information which may be confidential or privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in or attached to the message. If you have received this message in error, please advise the sending by reply email to*

(b) (6), (b) (7)(C) [@unioncounsel.net](#) and delete the message.

CASE NO. 18-1236

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

STATION GVR ACQUISITION, LLC D/B/A GREEN VALLEY RANCH  
RESORT SPA CASINO,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

and

INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 501, AFL-CIO

*Proposed Intervenor.*

---

**MOTION TO INTERVENE**

---

David A. Rosenfeld, Bar No. 058163  
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*Attorneys for Proposed Intervenor,*

INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 501, AFL-CIO

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO, the Proposed Intervenor in this matter, hereby moves this Court for an Order permitting it to intervene in support of Respondent in the proceeding in *Station GVR Acquisition, LLC D/B/A Green Valley Ranch Resort Spa Casino v. National Labor Relations Board*, Case No. 18-1236.

Intervention is sought under Federal Rule of Appellate Procedure 15.

Normally, charging parties such as INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO are permitted intervention in these proceedings seeking review of an Order of the National Labor Relations Board. See *International Union, UAW, Local 283 v. Scofield* (1965) 382 U.S. 205, 208. Indeed, *Scofield* holds that charging parties such as INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO are normally entitled to intervention in the Circuit Court.

Proposed Intervenor will move to have this matter transferred to the Ninth Circuit to be consolidated with previously pending matters involving the same dispute. See Ninth Circuit Cases No 18-71124 and 18-72434.

Dated: September 10, 2018

Respectfully Submitted,

By: /s/ David A. Rosenfeld  
David A. Rosenfeld  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
  
Attorneys for Proposed INTERVENOR  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501,  
AFL-CIO

## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On September 10, 2018, I served the following documents in the manner described below:

### MOTION TO INTERVENE

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

On the following part(ies) in this action:

Farah Qureshi  
Associate Executive Secretary  
Office of Executive Secretary (Vacant)  
National Labor Relations Board  
1015 Half Street SE  
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[farah.qureshi@nrlb.gov](mailto:farah.qureshi@nrlb.gov)

*Office of Executive Secretary of  
National Labor Relations Board*

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*National Labor Relations Board*

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*National Labor Relations Board*

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*National Labor Relations Board*

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[laboradam@aol.com](mailto:laboradam@aol.com)

*International Union of Operating  
Engineers Local 501, AFL-CIO*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 10, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler

1\986261

CASE NO. 18-1236

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

STATION GVR ACQUISITION, LLC D/B/A GREEN VALLEY RANCH  
RESORT SPA CASINO,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent,*

and

INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 501, AFL-CIO

*Proposed Intervenor.*

---

**CORPORATE DISCLOSURE STATEMENT**

---

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1001 Marina Village Parkway, Suite 200  
Alameda, California 94501  
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*Attorneys for Proposed Intervenor,*

INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 501, AFL-CIO

Pursuant to Federal Rules of Appellate Procedure 26.1, Proposed Intervenor, INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO, is an unincorporated association and is a labor organization.

Dated: September 10, 2018

Respectfully Submitted,

By: /s/ David A. Rosenfeld  
David A. Rosenfeld  
WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

Attorneys for Proposed INTERVENOR  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501,  
AFL-CIO

## PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On September 10, 2018, I served the following documents in the manner described below:

### CORPORATE DISCLOSURE STATEMENT

- ☒ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kkempler@unioncounsel.net](mailto:kkempler@unioncounsel.net) to the email addresses set forth below.

On the following part(ies) in this action:

Farah Qureshi  
Associate Executive Secretary  
Office of Executive Secretary (Vacant)  
National Labor Relations Board  
1015 Half Street SE  
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*Office of Executive Secretary of  
National Labor Relations Board*

Cornele A. Overstreet  
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National Labor Relations Board  
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*National Labor Relations Board*

Linda Dreeben  
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*Attorneys for Respondent National Labor  
Relations Board*

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*National Labor Relations Board*



Peter Robb  
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General Counsel  
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*National Labor Relations Board*

Stanley J. Panikowski  
DLA Piper LLC (US)  
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San Diego, CA 92101  
[Stanley.panikowski@dlapiper.com](mailto:Stanley.panikowski@dlapiper.com)

*Attorneys for Station GVR Acquisition,  
LLC d/b/a Green Valley Ranch Resort  
and Spa Casino*

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*Attorneys for Station GVR Acquisition,  
LLC d/b/a Green Valley Ranch Resort  
and Spa Casino*

Adam N. Stern  
The Meyers Law Group  
9327 Fairway View Place, Suite 100  
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[laboradam@aol.com](mailto:laboradam@aol.com)

*International Union of Operating  
Engineers Local 501, AFL-CIO*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 10, 2018, at Alameda, California.

/s/ Karen Kempler  
Karen Kempler

145857\986544

**From:** [Moore, Dawn M.](#)  
**To:** [Lipkin, Harriet](#); [drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net)  
**Subject:** NP Sunset LLC d/b/a Sunset Station Hotel and Casino - Case 28-CA-225263  
**Date:** Monday, September 10, 2018 5:28:05 PM  
**Attachments:** [image001.png](#)  
[ERR.28-CA-225263.Errata to CNOH 9-10-18.pdf](#)

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Please see the attached document.

*Dawn M. Moore*

Administrative Assistant  
Region 28 – Las Vegas Resident Office  
National Labor Relations Board  
Foley Federal Building  
300 Las Vegas Boulevard South, Suite 2-901  
Las Vegas, NV 89101-5833  
Tel: (702) 820-7466  
Fax: (702) 388-6248



NATIONAL LABOR  
RELATIONS BOARD



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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC d/b/a SUNSET STATION  
HOTEL CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**ERRATA TO COMPLAINT AND NOTICE OF HEARING**

On August 27, 2018, a Complaint and Notice of Hearing issued in the above-captioned case. On page 1, line 5 of the introductory paragraph, the name of Respondent was erroneously listed as “NP Palace LLC d/b/a Palace Station Hotel & Casino.” The correct name should be “NP Sunset LLC d/b/a Sunset Station Hotel & Casino (Respondent).” On page 2, line 2 of paragraph 5(b), an erroneous verb tense was used; “certifies” should be substituted by “certified.”

Dated at Phoenix, Arizona, this 10<sup>th</sup> day of August 2018.

/s/ **Cornele A. Overstreet**  
Cornele A. Overstreet, Regional Director

**From:** [Gomez, Luis](#)  
**To:** [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com); [drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net)  
**Subject:** NP Sunset LLC d/b/a Sunset Station Hotel and Casino/28-CA-225263  
**Date:** Wednesday, September 12, 2018 7:30:03 PM  
**Attachments:** [MOT-28-CA-225263.Motions to Transfer and continue matter before the Board and for Summary Judgment.pdf](#)  
[MSJ.28-CA-225263.GCX 1-GCX 18 to CGC for Summary Judgment.pdf](#)

---

Gentlemen:

Attached are the Motions to transfer and continue matter before the Board and for Summary Judgment and attachments in the above matter.

**V/R**

*Luis Gomez*

**Luis Gomez**

**Language Specialist**

**National Labor Relations Board**

**Region 28**

**2600 N. Central Avenue, Suite 1400**

**Phoenix, AZ 85004**

**(602) 416-4747 (direct line)**

**(602) 640-2178 (fax)**



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NP SUNSET LLC d/b/a  
SUNSET STATION HOTEL CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**MOTIONS TO TRANSFER AND CONTINUE MATTER BEFORE  
THE BOARD AND FOR SUMMARY JUDGMENT**

The General Counsel, by the undersigned Counsel for the General Counsel, hereby files with the National Labor Relations Board (the Board) pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations, Series 8, as amended (the Board's Rules), these motions to transfer and continue matter before the Board and for summary judgment with respect to the test of certification by NP Sunset LLC d/b/a Sunset Station Hotel and Casino (Respondent) of International Union of Operating Engineers Local 501, AFL-CIO (the Union) and, in support of these motions, alleges as follows:

1. On June 29, 2018, the Union filed a Petition in Case 28-RC-222992, seeking certification as the representative of certain employees of Respondent. (A copy of the Petition and the Affidavit of Service are attached as **GCX 1** and **GCX 2**, respectively.)
2. On July 9, 2018, a pre-election hearing was conducted by a Hearing Officer of the Board wherein Respondent contended that the Petition should be dismissed as the petitioned-for employees were guards within the meaning of the Act. (A copy of Respondent's July 5, 2018 Statement of Position and supporting brief and filed in response to the Petition are attached as **GCX 3** and **GCX 4**, respectively.)

3. On July 13, 2018, the Regional Director for Region 28 of the Board (the Regional Director) issued a Decision and Direction of Election, directing that an election be held on Thursday, July 19, 2018, from 7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m. in the Sevilla Banquet Room at Respondent's facility located at 1301 West Sunset Road, Henderson, Nevada. (A copy of the Decision and Direction of Election is attached as **GCX 5**.)

4. On July 19, 2018, a secret ballot election was conducted among Respondent's employees in the unit described in the Decision and Direction of Election. At the conclusion of the election, the parties were furnished with a Tally of Ballots. The Tally of Ballots shows that of approximately 12 eligible voters, 10 cast valid ballots for the Union, and one (1) cast a valid ballot against the Union. There were no challenged ballots or void ballots. No post-election objections were filed by either party. (A copy of the Tally of Ballots is attached as **GCX 6**.)

5. On August 1, 2018, the Regional Director issued a Certification of Representative, certifying the Union as the exclusive representative of all the employees in the following bargaining unit (the Unit):

All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by [Respondent] at its facility in Henderson, Nevada; excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.

(A copy of the Certification of Representative is attached as **GCX 7**.)

6. On August 13, 2018, Respondent filed with the Board its Request for Review of the Regional Director's Decision and Direction of Election and Certification of Representative, including exhibits. (A copy of Respondent's Request for Review and exhibits are attached as **GCX 8**.) On about August 20, 2018, the Union filed with the Board its

Opposition to Respondent's Request for Review. (A copy of the Union's Opposition is attached as **GCX 9**.) On September 7, 2018, the Board issued its unpublished Order, denying Respondent's Request for Review. (A copy of the Board's Order is attached as **GCX 10**.)

7. On August 9, 2018, the Union filed the charge in Case 28-CA-225263, alleging violations of Section 8(a)(1) and (5) in that Respondent refused to recognize and bargain with the Union as the certified representative of the Unit, and refused to provide relevant and necessary information requested by the Union for purposes of collective-bargaining. (Copies of the charge and the affidavit of service are attached as **GCX 11** and **GCX 12**, respectively.)

8. On August 27, 2018, the Regional Director issued a Complaint and Notice of Hearing (the Complaint), alleging, in pertinent part, that since about July 27, 2018, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit, and has failed and refused to provide the Union with necessary and relevant information requested on July 26, 2018. (Copies of the Complaint and the affidavit of service are attached as **GCX 13** and **GCX 14**, respectively.) On September 10, 2018, the Regional Director issued an Errata to the Complaint to correct two typos. (Copies of the Errata and affidavit of service are attached as **GCX 15** and **GCX 16**, respectively.)

9. On August 16, 2018, Respondent filed an Answer to the Complaint. (A copy of Respondent's Answer is attached as **GCX 17**.) Respondent does not intend to file anything in response to the Errata to the Complaint and stands on its Answer. (A copy of Respondent's email confirming it does not intend to file anything in response to the Errata is attached as **GCX 18**.) In its Answer, Respondent admits/denies the Complaint allegations as follows:

- i. Admits Complaint paragraph 1 establishing the filing and service of the charge.
- ii. Admits Complaint paragraph 2 establishing commerce and jurisdiction.
- iii. Admits Complaint paragraph 3 establishing the labor organization status of the Union.
- iv. Denies (in part) Complaint paragraph 4(a) alleging that Valerie Murzl (Murzl) is the Corporate Vice President of Human Resources a statutory supervisor within the meaning of Section 2(11) of the Act; but, Admits that Murzl is a statutory agent of Respondent within the meaning of Section 2(13) of the Act.
- v. Denies Complaint paragraph 4(b) alleging that Respondent's counsel have been agents of Respondent within the meaning of Section 2(13) of the Act on the grounds that it is "vague and lacks requisite and meaningful specificity."
- vi. Denies Complaint paragraph 5(a) alleging the appropriateness of the Unit.
- vii. Admits Complaint paragraph 5(b) establishing that on July 19, 2018 a representation election was conducted among employees in the Unit and, on August 1, 2018, the Union was certified as the exclusive collective-bargaining representative of the Unit.
- viii. Denies Complaint paragraph 5(c) alleging the Union's status as the exclusive collective-bargaining representative of the Unit based on Section 9(a) of the Act at all times since July 19, 2018.



ix. Admits Complaint paragraph 5(d) establishing that since about July 26, 2018, the Union has requested that Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

x. Admits Complaint paragraph 5(e) establishing that since about July 27, 2018, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

xi. Admits Complaint paragraph 5(f) establishing that on about July 26, 2018, the Union requested in writing that Respondent furnish the Union with the following information:

1. A list of current employees including their names, dates of hire, rates of pay job classification, last known address, phone number, date of completion of any probationary period, and Social Security number.
2. A copy of all current company personnel policies, practices or procedures.
3. A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
4. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees.
5. Copies of all current job descriptions.
6. Copies of any company wage or salary plans.
7. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year. A copy of all witness statements for any such discipline.
8. A statement and description of all wage and salary plans which are not provided under number 6 above.

xii. Denies Complaint paragraph 5(g) alleging that the information requested by the Union, as described above (and in paragraph 5(f) of the Complaint) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

xiii. Admits Complaint paragraph 5(h) establishing that since about July 27, 2018, Respondent by its counsel, in writing, has failed and refused to furnish the information requested by the Union, as described above (and in paragraph 5(f) of the Complaint).

xiv. Denies Complaint paragraph 6 alleging that Respondent's conduct violates Section 8(a)(1) and (5) of the Act.

xv. Denies Complaint paragraph 7 alleging that Respondent's conduct affects commerce within the meaning of Sections 2(6) and (7) of the Act.

10. Respondent's denials that the Union was properly certified as the exclusive bargaining representative under Section 9(a) of the Act are predicated on Respondent's raised and rejected arguments in Case 28-RC-222992.

11. Further, Respondent does not assert that newly discovered or previously unavailable evidence has come to light since the litigation and disposition of Case 28-RC-222992. Nor does Respondent allege any special circumstances that would require the Board to reexamine its Order Denying Respondent's Request for Review of the Regional Director's Decision and Direction of Election, and Certification of Representative in Case 28-RC-222992.

12. At all material times, the Board's Rules and Regulations have held:

*Finality; waiver; denial of request.* The Regional Director's actions are final unless a request for review is granted. The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair

labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. **Denial of a request for review shall constitute an affirmance of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.** (Emphasis added.)

(Prior to April 14, 2015, this rule appeared in Section 102.67(f) of the Board's Rules and Regulations. It now appears in Section 102.67(g) of the Board's Rules and Regulations.)

13. Well-established Board law and Court case authority hold that a party may not relitigate, in an unfair labor practice proceeding, representation issues that were, or could have been, litigated in a prior representation proceeding. *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 159-163 (1941); *Delek Refining, Ltd.*, 363 NLRB No. 41 (Nov. 13, 2015); *Fedex Freight, Inc.*, 362 NLRB No. 140 (June 30, 2015); *The George Washington University*, 346 NLRB 155 (2005), enfd. per curiam 2006 WL 4539237 (D.C. Cir. 2006); *Ovid Convalescent Manor, Inc.*, 264 NLRB 774, 775 (1982), enfd. mem. 732 F.2d 155 (6th Cir. 1984); *Lighthouse for the Blind of Houston*, 248 NLRB 1366, 1367 (1980), enfd. 696 F.2d 399 (5th Cir. 1983); *Boatel, Inc.*, 204 NLRB 896, 897 (1973), enfd. mem. 490 F.2d 990 (5th Cir. 1974); *Keco Industries, Inc.*, 191 NLRB 257, 258 (1971), enfd. 458 F.2d 1356 (6th Cir. 1972); *General Dynamics Corp.*, 187 NLRB 679, 680 (1971), enfd. per curiam 447 F.2d 1370 (5th Cir. 1971); *Westinghouse Broadcasting Company, Inc.*, 218 NLRB 693 (1975).

14. Since Respondent has refused to recognize, bargain, and furnish the Union with information since July 27, 2018 (following the Union's July 26, 2018 request), the charge in Case 28-CA-225263 filed by the Union on August 9, 2018, is not outside the Section 10(b) six-month statute of limitations.

15. The foregoing averments and legal authority show that Respondent's Answer has not raised any genuine or litigable dispute as to a relevant or material issue of fact. Accordingly, this matter is ripe for summary judgment on the pleadings.

WHEREFORE, Counsel for the General Counsel respectfully moves:

A. That in order to expedite judgment in this unfair labor practice case, it be transferred to and continued before the Board for decision. Precedent for summarily adjudicating refusals to bargain in test-of-certification situations is well grounded, and routinely survives due process challenges. See, e.g., *NLRB v. Tallahassee Coca-Cola Bottling Co., Inc.*, 409 F.2d 201, 203 (5th Cir. 1969); *NLRB v. Union Brothers, Inc.*, 403 F.2d 883, 886-888 (4th Cir. 1968); cf. *NLRB v. Tennessee Packers, Inc.*, 379 F.2d 172, 177-178 (6th Cir. 1967), cert. denied 389 U.S. 958 (1967) (consent election).

B. That the Board take official notice of the record in Case 28-CA-208266 as defined in Section 102.68 of the Board's Rules and Regulations. See, e.g., *Delek Refining, Ltd.*, *supra*.

C. That the Board find the pleadings to reveal no controversy as to any relevant or material fact that would necessitate a hearing or an administrative law judge's decision.

D. That these Motions be ruled upon as soon as possible, so that, if it is granted, a hearing will be obviated.

E. That the Board find that the pleadings establish Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged in paragraphs 6(e) of the Complaint.

F. That the Board issue a Decision and Order containing findings of fact, conclusions of law, and a remedial order consistent with the conclusion that Section 8(a)(1) and

(5) of the Act have been, and are being violated, including an order that the initial certification year shall be deemed to begin on the date Respondent commences to bargain in good faith with the Union as the certified bargaining representative of the employees in the appropriate Unit.

*Campbell Soup Company*, 224 NLRB 13 (1976), enfd. 553 F.2d 96 (4th Cir 1977).

Dated at Las Vegas, Nevada, this 12<sup>th</sup> day of September 2018.

Respectfully submitted,

/s/ Elise F. Oviedo

Elise F. Oviedo, Counsel for the General Counsel  
National Labor Relations Board – Region 28  
300 Las Vegas Blvd. South, Ste. 2-901  
Las Vegas, NV 89101-5833  
Telephone: (702) 820-7470  
Facsimile: (702) 388-6248  
Email: [Elise.Oviedo@nrlrb.gov](mailto:Elise.Oviedo@nrlrb.gov)

## **CERTIFICATE OF SERVICE**

I hereby certify that the **MOTIONS TO TRANSFER AND CONTINUE MATTER BEFORE THE BOARD AND FOR PARTIAL SUMMARY JUDGMENT** in NP Sunset LLC d/b/a Sunset Station Hotel and Casino, Case 28-CA-225263, were served via E-Gov, E-Filing, and Email on this 11<sup>th</sup> day of September 2018, on the following:

### **Via E-Gov, E-Filing:**

Office of the Executive Secretary  
National Labor Relations Board  
Office of the Executive Secretary  
1015 Half Street SE – Room 5011  
Washington, DC 20570

### **Via E-Mail:**

Harriet Lipkin, Attorney at Law  
DLA Piper LLP (US)  
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Email: [Harriet.Lipkin@dlapiper.com](mailto:Harriet.Lipkin@dlapiper.com)

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401 B Street, Suite 1700  
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Jose Soto, Director of Organizing  
International Union of Operating Engineers Local 501,  
AFL-CIO  
301 Deauville Street  
Las Vegas, NV 89106  
E-Mail: [jsoto@local501.org](mailto:jsoto@local501.org)



Dawn M. Moore  
Secretary to the Regional Attorney  
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UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**RC PETITION**

DO NOT WRITE IN THIS SPACE

Case No.

28-RC-222992

Date Filed

June 29, 2018

**INSTRUCTIONS:** Unless e-Filed using the Agency's website, [www.nlr.gov/](http://www.nlr.gov/), submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

**1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

<b>2a. Name of Employer:</b> Sunset Station		<b>2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code):</b> 1301 W Sunset Rd, Henderson, NV 89014	
<b>3a. Employer Representative - Name and Title:</b> Valerie Murzl Vice President of Human Resources		<b>3b. Address (if same as 2b - state same):</b> Same	
<b>3c. Tel. No.</b> (702) 547-7777	<b>3d. Cell No.</b> (702) 495-3458	<b>3e. Fax No.</b>	<b>3f. E-Mail Address</b> Valerie.Murzl@stationcasinos.com
<b>4a. Type of Establishment (Factory, mine, wholesaler, etc.)</b> Hotel and Casino		<b>4b. Principal Product or Service</b> Gaming, Lodging and Entertainment	<b>5a. City and State where unit is located:</b> Henderson, Nevada
<b>5b. Description of Unit Involved:</b> <b>Included:</b> All Full time and Regular Part time or Floaters Slot Technicians, Utility Slot Technicians and Slot Mechanical <b>Excluded:</b> All other employees, office clerical employees, guards and supervisors as defined by the Act.			<b>6a. Number of Employees in Unit:</b> 12 <b>6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Check One: <input checked="" type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) 6/29/18 and Employer declined recognition on or about (Date) No Reply (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
<b>8a. Name of Recognized or Certified Bargaining Agent (if none, so state)</b> N/A		<b>8b. Address:</b> N/A	
<b>8c. Tel. No.</b> N/A	<b>8d. Cell No.</b> N/A	<b>8e. Fax No.</b> N/A	<b>8f. E-Mail Address</b> N/A
<b>8g. Affiliation, if any:</b> N/A		<b>8h. Date of Recognition or Certification</b> N/A	<b>8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)</b> N/A
<b>9. Is there now a strike or picketing at the Employer's establishment(s) involved?</b> NO If so, approximately how many employees are participating? (Name of Labor Organization) , has picketed the Employer since (Month, Day, Year)			
<b>10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (if none, so state)</b> N/A			
<b>10a. Name</b> N/A	<b>10b. Address</b> N/A	<b>10c. Tel. No.</b> N/A	<b>10d. Cell No.</b> N/A
		<b>10e. Fax No.</b> N/A	<b>10f. E-Mail Address</b> N/A
<b>11. Election Details:</b> If the NLRB conducts an election in this matter, state your position with respect to any such election:			<b>11a. Election Type:</b> <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
<b>11b. Election Date(s):</b> 7/14/18		<b>11c. Election Time(s):</b> 7:30-9:00 am 2:30-4:00pm	<b>11d. Election Location(s):</b> 1301 W Sunset Rd, Henderson, NV 89014
<b>12a. Full Name of Petitioner (including local name and number):</b> International Union of Operating Engineers Local 501, AFL-CIO		<b>12b. Address (street and number, city, State and ZIP code):</b> 301 Deauville St Las Vegas NV 89106	
<b>12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):</b> International Union of Operating Engineers Local 501, AFL-CIO			
<b>12d. Tel. No.</b> (702) 382-8452	<b>12e. Cell No.</b> (702) 622-0846	<b>12f. Fax No.</b> (702) 386-5813	<b>12g. E-Mail Address</b> jsoto@local501.org
<b>13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.</b>			
<b>13a. Name and Title:</b> Jose Soto-Director of Organizing		<b>13b. Address (street and number, city, State and ZIP code):</b> 301 Deauville St Las Vegas NV 89106	
<b>13c. Tel. No.</b> (702) 382-8452	<b>13d. Cell No.</b> (702) 622-0846	<b>13e. Fax No.</b> (702) 386-5813	<b>13f. E-Mail Address</b> jsoto@local501.org
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
<b>Name (Print)</b> Jose Soto		<b>Signature</b>	<b>Title</b> Director of Organizing
			<b>Date</b> 6/29/18

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<b>NP SUNSET LLC D/B/A SUNSET STATION HOTEL CASINO</b>  <b>Employer</b>  <b>and</b> <b>INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO</b>  <b>Petitioner</b>	<b>Case 28-RC-222992</b>
--	--------------------------

**AFFIDAVIT OF SERVICE OF: Petition and Notice of Representation Hearing dated June 29, 2018, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 29, 2018, I served the above documents by electronic mail and regular mail upon the following persons, addressed to them at the following addresses:

Harriet Lipkin, Attorney at Law  
DLA Piper LLP (US)  
500 8th Street NW  
Washington, DC 20004-2131  
[harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com)

NP Sunset LLC d/b/a  
Sunset Station Hotel Casino  
1301 West Sunset Road  
Henderson, NV 89014  
[valerie.murzl@stationcasinos.com](mailto:valerie.murzl@stationcasinos.com)

Jose Soto, Director of Organizing  
International Union of Operating Engineers  
Local 501, AFL-CIO  
301 Deauville Street  
Las Vegas, NV 89106  
[jsoto@local501.org](mailto:jsoto@local501.org)

**June 29, 2018**

Date

Dawn M. Moore,  
Designated Agent of NLRB

Name

**/s/ Dawn M. Moore**

Signature



UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STATEMENT OF POSITION****DO NOT WRITE IN THIS SPACE**

Case No.

28-RC-222992

Date Filed

6/29/18

**INSTRUCTIONS:** Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

**Note:** Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position: <b>NP Sunset LLC d/b/a Sunset Station Hotel &amp; Casino</b>		1c. Business Phone: <b>702-495-3346</b>	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code): <b>1301 W Sunset Rd, Henderson NV 89014</b>		1d. Cell No.: <b>702-370-7592</b>	1f. e-Mail Address: <b>jennifer.johnson@stationcasinos.com</b>
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.) <b>The petitioned-for unit is composed of "guards" within the meaning of the Act. The Petitioner cannot be certified as the bargaining representative of the unit because it admits to membership employees other than guards.</b>			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added: <b>N/A</b> Excluded: <b>All slot and utility technicians</b>			
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility. <b>N/A</b>			
5. Is there a bar to conducting an election in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position. <b>The petitioned-for unit is composed of "guards" within the meaning of the Act. The Petitioner cannot be certified as the bargaining representative of the unit because it admits to membership employees other than guards.</b>			
6. Describe all other issues you intend to raise at the pre-election hearing. <b>Ban on cellphones and other electronic devices in the voting area; date and location of the election.</b>			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at <a href="http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015">http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015</a> (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of all individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D).			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s): <b>On a Thursday</b>	8c. Time(s): <b>7-8 a.m., 3-4 p.m.</b>	8d. Location(s): <b>Banquet Room-TBD base on date</b>	
8e. Eligibility Period (e.g. special eligibility formula): <b>None</b>	8f. Last Payroll Period Ending Date: <b>TBD</b>	8g. Length of payroll period <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
<b>9. Representative who will accept service of all papers for purposes of the representation proceeding</b>			
9a. Full name and title of authorized representative <b>Harriet Lipkin</b>		9b. Signature of authorized representative <b>/s/ Harriet Lipkin</b>	9c. Date <b>7/5/18</b>
9d. Address (Street and number, city, state, and ZIP code) <b>500 Eighth Street, NW Washington, D.C. 20004</b>			9e. e-Mail Address <b>harriet.lipkin@dlapiper.com</b>
9f. Business Phone No.: <b>207.799.4250</b>	9g. Fax No.: <b>202.799.5250</b>	9h. Cell No.: <b>202.669.0099</b>	

**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)  
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Attachment B: List of All Employees in Petitioned-For Unit

FULL NAME	WORK LOCATION	JOB CLASSIFICATION	SHIFT
(b) (6), (b) (7)(C)	SLOTS - 30102	Slot Tech	(b) (6), (b) (7)(C)
	SLOTS - 30102	Utility Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Utility Tech	
	SLOTS - 30102	Utility Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	

**Attachment C: Employees to be Added**

N/A

Attachment D: Employees to be Excluded

FULL NAME	WORK LOCATION	JOB CLASSIFICATION	SHIFT
(b) (6), (b) (7)(C)	SLOTS - 30102	Slot Tech	(b) (6), (b) (7)(C)
	SLOTS - 30102	Utility Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Utility Tech	
	SLOTS - 30102	Utility Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	
	SLOTS - 30102	Slot Tech	

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL CASINO**

**and**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 501, AFL-CIO**

**Case No. 28-RC-222992**

**EMPLOYER’S POSITION STATEMENT**

**I. INTRODUCTION**

The International Union of Operating Engineers Local 501, AFL-CIO (“Union”) petitioned to represent a unit comprising all slot technicians and utility technicians at the Employer’s facility. The Petition must be dismissed because the core duties of the technicians are to “enforce against employees and other persons rules to protect [the] property of the employer,” and consequently the technicians are “guards” within the meaning of the Act. *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017). As the Union indisputably admits to membership employees other than guards, the Union is ineligible to represent the petitioned-for unit.

The Employer also submits that, in the event the Regional Director directs an election in this matter, cameras, cellphones, and other electronic devices should be banned from the voting area. Banning electronic devices from the voting area would eliminate the potential for team members to be pressured into photographing their ballots to “prove” how they voted. There is no legitimate need for these devices in the voting area. The devices should be temporarily held by the observers and/or Board agent(s), and then returned to the team member after the team member casts his or her ballot.

## II. THE PETITIONED-FOR UNIT IS COMPOSED OF GUARDS.

Under Section 9(b) of the Act, “no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” A guard is defined as a person employed to “enforce against employees and other persons rules to protect [the] property of the employer . . .” *Id.*

In *Bellagio*, the D.C. Circuit recently held that surveillance technicians are “guards” under Section 9(b) of Act. 863 F.3d 839 (D.C. Cir. 2017). In so holding, the Court expressly rejected the Board’s narrow reading that the technicians could not be guards simply because they “make no rounds,” and did not carry out functions akin to traditional plant security guards (*i.e.*, they did not confront guests, carried no weapons, and did not wear security uniforms or badges). *See id.* at 845. The Court’s ruling considered key factors not given due weight by the Board, such as the technicians’ duties in deterring, detecting, reporting, and investigating suspicious activity, the modern context in which their enforcement took place, their role in preventing and investigating misconduct by other employees, and their role in protecting the Employer’s valuable assets generally. *Id.* at 849-50. In short, the *Bellagio* court affirmed the view that the statutory definition of “guard” is not limited to notions of a prototypical plant security guard, but includes employees who more broadly enforce rules against employees or patrons to protect the Employer’s property or assets. *Id.* at 847-48; *see also MGM Grand Hotel*, 274 NLRB 139, 139-40 (1985) (fire alarm and security system operators fell within statutory definition of “guard” even where sole duties were to observe and report); *Rhode Island Hosp.*, 313 N.L.R.B. 343, 346-47 (1993) (finding that shuttle van drivers were “guards”; “[A]lthough one of their primary

duties is to transport employees from building to building, they are also charged with the responsibility of being on the lookout for and reporting security problems or rules violations.”); *see generally Am. Dist. Tel. Co.*, 160 N.L.R.B. 1130, 1136 (1966) (“guard” status is not limited to employees who enforce rules against other employees).

Similarly, in *A.W. Schlesinger Geriatric Ctr., Inc.*, 267 N.L.R.B. 1363 (1983), the Board considered the “guard” status of two maintenance employees who walked the employer’s premises and – in addition to their maintenance duties – were authorized to ask that a trespasser or other employee cease creating a disturbance or that the unauthorized person leave. The Board found that, “although the maintenance employees have no special training as guards and do not wear guard uniforms or carry firearms, we conclude that the two night and weekend maintenance employees are employed for security purposes in addition to their maintenance duties.” *Id.* at 1364. Significantly, the Board found that the maintenance employees were responsible for keeping unauthorized persons off the premises, even though they had been instructed to contact a supervisor or law enforcement officer first and to avoid confrontation if possible. The Board concluded that it was “sufficient that they possess and exercise responsibility to observe and report infractions, as this is an essential step in the procedure for enforcement of the [employer’s] rules.” *Id.* Further, the Board found it “not determinative that [these duties were] not their only function.” *Id.*; *see also McDonnell Aircraft Co. v. NLRB*, 827 F.2d 324, 326-27 (8th Cir. 1987) (to qualify as a “guard” the performance of guard duties need not be the employee’s only function, and it is sufficient that an employee is responsible for reporting rule infractions to his supervisor).

Here, the Employer’s evidence will demonstrate that, in the context of a modern hotel-casino, the duties and responsibilities of slot technicians have evolved such that their core

functions now include enforcing the Employer's rules and policies against guests and employees to safeguard the Employer's property and assets. For instance, slot technicians:

- Play an integral and indispensable role in assisting the Nevada Gaming Control Board to investigate gaming irregularities and disputes – indeed, without the Slot Technicians, the Gaming Control Board could not investigate and resolve the disputes and issues.
- Protect the Company from fraudulent claims and payouts to guests by enforcing the Employer's procedures to verify payouts. Notably, the decision of the Employer on whether to payout a jackpot always follows the recommendation of the Slot Technician.
- Maintain, investigate, and verify bill validators to protect the Employer against counterfeit currency, counterfeit "EZ-Pay vouchers," claims that the machine failed to correctly pay or credit a guest, and other attempted theft and fraud.
- Protect the Employer from fraudulent claims of game malfunctions, lost credits, or failure to payout winning hands.
- Physically and electronically update and modify slot machines to protect the Employer from physical and/or software vulnerabilities and exploits.
- Implement the Employer's policies to ensure that newly-purchased or rented games are set up correctly; failure to do so could expose the Employer to significant gaming losses.
- Are entrusted with slot machine access keys, which would allow an individual to alter game outcomes and obtain access to the cash within the machine.
- Protect the Employer's games from tampering and other advantage play by inspecting and verifying slot machines that have higher-than-expected payout ratios.
- Monitor nearly every aspect of slot machines—from physical tampering or destruction to technical settings and data to prevent cheating or other illegal activities.
- Maintain security devices on slot machines (e.g. door sensors) and investigating and reporting breaches of the same.
- Review and address reports from vendors outlining new vulnerabilities and issues with machine software; individually check machines for vulnerabilities, verify machine game chips, and report any issues.
- Monitor the casino floor for underage, banned, or otherwise unauthorized guests consistent with Employer rules and policies, and escalate the matter to security as necessary.



These are not minor or incidental duties, but rather core job functions. The *Bellagio* court recognized that in today's casinos, tampering can happen in numerous and increasingly sophisticated ways.<sup>1</sup> The technicians are the front line of defense to these threats, and in some cases the only safeguard against potential loss to the Employer. Technicians thus receive extensive technical training on slot machine operations, detecting and preventing exploits or vulnerabilities, and are expected to resolve any issues in a timely manner so as to prevent further loss. Moreover, because technicians are the only employees with the technical expertise to fully investigate such issues, they are essential to detecting, investigating, and preventing malfeasance (whether by guests, vendors, or other employees) and the casinos could not properly maintain gaming security without the slot technicians. Technicians also act as an added layer of security against underage gambling, alcohol consumption, and illegal gaming activity.

Any failure or intentional misconduct by the technicians in diligently carrying out these duties jeopardizes the Employer's business. For instance, if a technician fails to check for security flaws or vulnerabilities, properly reset a jackpot, or repair a malfunctioning door sensor, the Employer could not only suffer monetary losses due to unintended payouts, but stands to be cited and/or fined by state regulators. The importance these functions is underscored by the fact that technicians who fail to do so with care are subject to discipline, up to and including termination of employment.

Consequently, the Employer places significant trust in the technicians when it comes to enforcing its rules for protecting its property and assets. The technicians' unique "know-how" and access to the thousands of slot machines on the property—making up the majority share of all gaming activity—makes the technicians an integral part of the Employer's efforts to

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<sup>1</sup> Brendan Koerner, *Russians Engineer a Brilliant Slot Machine Cheat—And Casinos Have No Fix*, *Wired*, February 6, 2017, accessed August 9, 2017, available at: <https://www.wired.com/2017/02/russians-engineer-brilliant-slot-machine-cheat-casinos-no-fix/>.

safeguard its property and assets, and any violation of the trust placed in them would result in substantial loss of Employer property and assets. *Bellagio*, 863 F.3d at 851. Thus the authority, access, and trust given to technicians are factors that are relevant to their status as “guards” under the Act. *Id.*

In short, the petitioned-for unit is composed of employees whose core job duties include the enforcement of the Employer’s rules against third-party guests, other employees, vendors, and contractors. By virtue of the above duties, they fall squarely within the statutory definition of “guard” under recent case law in *Bellagio*, and in line with Board precedent in *A.W. Schlesinger*, *MGM Grand* and their progeny. As there is no dispute that the Union admits to membership non-guard employees, the Union cannot be certified as the exclusive bargaining representative of the Slot Technicians and Slot Mechanics.

### **III. ELECTRONIC DEVICES SHOULD BE BANNED FROM THE VOTING AREA**

The Employer also submits that – in the event the Regional Director directs an election – cameras, cell phones, and other electronic devices should be banned from the voting area. Electronic devices with the capability of taking photographs could be used to pressure team members to “prove” how they voted, undermining the premise of a secret ballot election. *See generally Columbine Cable Co., Inc.*, 351 N.L.R.B. 1087, 1087 (2007) (“The Board has long held that it is of vital importance to the Board’s effectuation of the policies of the Act that the regularity of its elections be above reproach. And if the integrity of the Board’s election process is to be maintained it is manifestly essential that employees be balloted in a secret election, for the secret ballot is a requisite for a free election.”); *N.W. Packing Co.*, 65 N.L.R.B. 890, 891 (1946) (“The secrecy of the ballot is essential in a Board-conducted election, and it may not be jeopardized.”) Indeed, “the Board has consistently set aside elections where voting arrangements

could have led employees to believe they were being observed as they voted.” *Columbine Cable*, 351 N.L.R.B. at 1088.

The potential use of cell phones and photography as tools of voter intimidation is widely recognized. The overwhelming majority of states restrict the photos or filming of a voter’s own marked ballot. See Digital Media Law Project, *State Law: Documenting the Vote 2012*, available at <http://www.dmlp.org/state-law-documenting-vote-2012#Washington> (last visited July 10, 2017) (chart summarizing state laws restricting photographing a voter’s own ballot and finding that at least 45 states had laws that either expressly restricted the practice or could be interpreted to do so). The rationale is straight forward – if a voter can “prove” how he or she voted, it enables voter coercion, pressure, and vote-buying.

There is no legitimate reason for these devices to be present in the voting area. They should be temporarily held by the Board agent(s) and/or observers and then returned to the team member once the team member has cast his or her ballot. At a minimum, voters should be clearly informed that the use of any such devices in the voting area is prohibited.

#### **IV. CONCLUSION**

For the reasons set forth above, the Employer respectfully requests that the Petition be dismissed. In the event that the Regional Director directs an election in this matter, the Employer further respectfully requests that the use of cell phones and other electronic devices be prohibited within the voting area.

Respectfully Submitted,

Date: July 5, 2018

/s/ Harriet Lipkin

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## CERTIFICATE OF SERVICE

I hereby certify this 5th of July, 2018, that a copy of the Employer's Station of Position, Attachments, Supporting Brief, and Commerce Questionnaire were electronically served on the Region through the Board's electronic filing system, and also served on:

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National Labor Relations Board  
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/s/ Kevin Harlow  
An Employee of DLA Piper LLP (US)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO**

**Employer**

**and**

**Case 28-RC-222992**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Union of Operating Engineers Local 501, AFL-CIO (Petitioner) seeks to represent a unit of full-time and regular part-time slot technicians, utility technicians (collectively, technicians) and slot mechanics employed by NP Sunset LLC d/b/a Sunset Station Hotel & Casino (the Employer) at its Henderson, Nevada facility. The Employer contends that Petitioner cannot be certified as the representative of the employees in the petitioned-for unit under Section 9(b)(3) of the National Labor Relations Act (the Act) because the unit includes guards, and Petitioner admits employees other than guards to membership. The Employer also requested the imposition of a ban on electronic devices in the voting area.

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board decisions, I find that technicians are not guards. Additionally, I find that it is not appropriate for me to impose a ban on electronic devices in the voting area in these pre-election proceedings.

**I. FACTS**

The Employer operates the Sunset Station Hotel & Casino in Henderson, Nevada. The Employer's facility includes gaming space of over 100,000 square feet occupied, in part, by approximately 2,100 gaming machines. The Employer employs approximately 1,200 employees.

The petitioned-for unit includes slot mechanics and technicians. However, the only witness at the hearing testified that the Employer does not currently employ any slot mechanics. The Employer employs approximately twelve technicians: nine slot technicians and three utility technicians. Utility technicians are the entry level position for technicians, essentially slot technicians in training. Generally, technicians are responsible for maintaining and ensuring

proper working order of the gaming machines. These technicians are involved in all aspects of machine conversions and relocations, and perform routine and advanced machine maintenance.

Technicians work in the Slot Department. The Slot Department is under the direction of Director of Slot Operations. The slot department has two separate sides: the technical side and the operations side. Reporting to the Director of Slot Operations on the technical side are the Slot Tech Manager and the Tech Project Supervisor. The technicians report to the Tech Project Supervisor.

Reporting to the Director of Slot Operations on the Operations side is the Slot Operations Manager, the Slot Shift Manager, the Slot Lead Guest Service Ambassador, and the Guest Service Ambassadors (GSAs).

Technicians spend approximately 75% to 80% percent of their working time on the gaming floor. They are charged with installing, repairing, and maintaining various facets of the gaming machines, including all test and support equipment, including but not limited to currency counters, signs, progressive and media hardware, and related equipment.

In order to perform their work, technicians carry keys that provide access to the machines. Key issuance is controlled and monitored by the Key Watcher or the Slot Office. Guest service attendants, and supervisors and shift managers within the Slot Department also may possess such keys. Loss of control of keys or taking keys off property is considered negligence and will result in corrective counseling up to and including termination. If technicians lose keys or take keys off property, they are required to immediately notify a slot lead or above who notifies surveillance, security, and senior slot management. Technicians are responsible for interacting with agents of the Nevada Gaming Control Board (NGCB) to facilitate and assist with the NGCB's inspection of machines.

In addition to duties related to machine maintenance, technicians are tasked with performing various functions to protect gaming machines against fraud and improper manipulation, which could lead to financial losses for the Employer. Technicians assist their supervisors or shift managers to investigate customer claims of machine malfunction, which, if verified, would lead to the Employer paying out a customer's legitimate winnings. If the customer's claim is not verified, then the claim would be denied. Moreover, technicians are responsible for fixing any machine malfunction, as well as performing manufacturer-recommended repairs that arise when vendors become aware of vulnerabilities or malfunctions in their machines.

Besides aiding with claims of gaming machine malfunction, technicians assist their supervisors or shift managers to investigate possible fraud by customers. For example, a technician may be asked by their supervisor or shift manager to assist with determining whether there is evidence of tampering if there are irregular payouts on a machine. The Employer would not be able to detect certain kinds of fraud without the work performed on its machines by its technicians. Due to their intimate knowledge of the gaming systems, technicians are prohibited

from gambling at the Employer's facility. The Tech Project Supervisor, Slot Tech Manager, and Director of Slot Operations are also prohibited from gambling at the Employer's facility. The record does not reflect whether the Employer's security guards are permitted to gamble at its facility, however, most of the Employer's employees are permitted to gamble at its facility.

All of the Employer's employees are obligated to be alert for evidence of other malfeasance such as underage gambling and drinking. Instances of underage gambling could lead to fines by the NGCB and the revocation of Employer's gaming license. Employees on the gaming floor, such as technicians, GSAs, bartenders, and servers, have a heightened responsibility. Technicians would report prohibited activity to the slot team supervisor, shift manager, or security. Technicians' duties in this regard are no greater than other employees who work on the gaming floor. All employees are responsible for reporting underage gambling and drinking.

The Employer has a Security Department, separate from its Slot Department and its Surveillance Department, with different management within each department. Technicians do not carry handcuffs, firearms, or other weapons. They receive no training in typical security functions. They are not expected to restrain or apprehend guests or respond physically with force. Technicians wear black uniforms specific to technicians only, with nametags on one side of their uniform shirts and a property patch designating Stations Casino on the other side of their uniform shirts. Technicians also wear tool belts to hold the tools they use on the machines and carry radios. Technicians do not wear or carry any badges.

Security personnel also wear black uniforms, but they are different from the black uniform worn by technicians. Unlike technicians, security personnel wear badges and a belt designed to carry their handcuffs, guns, batons, and radios.

The record does not reveal that the technicians are permitted to enter any surveillance room. Technicians do not participate in "sting" operations to detect malfeasance by employees or customers. There is no record evidence that the technicians have any involvement in the confrontation, reporting, or investigations of other employees, except to the extent that inspection of a gaming machine might be required. The record lacks any evidence that technicians have an obligation to report employee misconduct beyond that of other employees.

Security personnel are tasked with patrolling the inside and outside of the Employer's facility and investigating customer-related disturbances or suspected malfeasance by employees. Security personnel and technicians are not interchangeable and do not perform each other's work duties. Whenever technicians move money from machines, they are required to contact security personnel. The record does not further detail whether security personnel access machines or are permitted to gamble at the Employer's facility.



## II. ANALYSIS

### A. Non-Guard Status of Technicians

Section 9(b)(3) of the Act prohibits the Board from certifying a labor organization as the representative of a guard unit if the labor organization has members who are non-guard employees. The Employer asserts the technicians are guards because the core function of a technician is to enforce the Employer's rules and policies against guests and employees to safeguard the Employer's property and assets. The parties stipulated that Petitioner represents non-guard employees as a complement of its membership.

To be a guard under the Act, an individual must enforce rules to protect the property of the employer's premises against employees and other persons. *Reynolds Metal Co.*, 198 NLRB 120, 120 (1972). "[T]he Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities." *Boeing Co.*, 328 NLRB 128, 130 (1999).

"Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status." *Id.* The Board has rejected the assertion that an employee's "responsibility to report security problems confers guard status." *Id.* at 131.

While the Employer instructs technicians, as part of their job duties, to report to the Employer evidence of tampering with gaming machines or other fraudulent conduct, "[a] reporting function alone, without significant security-related responsibilities, [does not] confer guard status." *Id.* In *Boeing*, the Board rejected an assertion firefighters who were required "to be alert for suspicious activity while on their tours and question unfamiliar individuals on the premises" as well as "report suspicious activity to the security department rather than deal directly with it themselves" were guards. *Id.* at 131. The Board determined that "to the extent that the firefighters'...duties conferred upon them some limited guard responsibilities, those responsibilities were only a minor and incidental part of their overall responsibilities...and, thus, do not transform the firefighters into statutory guards." *Id.* at 131.

The Employer has not supported its claim that technicians are guards. The evidence presented does not show that technicians enforce rules to protect property against employees and other persons. From the evidence of record, technicians do not perform any of the traditional guard responsibilities identified by the Board in *Boeing*. Technicians were not hired to perform any security functions, and perform no security functions beyond what would be expected of any other employees.

Any guard-like responsibilities conferred on technicians are, like the firefighters in *Boeing*, a minor and incidental part of their primary responsibility of providing services to guests gambling on the Employer's gaming machines. As stated above, technicians do not confront people but are instead simply expected to report to the Employer.

The Employer pointed to the circuit court decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), in asserting that because technicians play an integral role in detecting and investigating loss and malfeasance in connection with gaming machines, technicians are guards. In that decision, the key issue was whether surveillance technicians were guards under the Act. In finding that the surveillance technicians were guards, the Court focused on four facts: (1) that certain surveillance/security personnel could not perform their job functions without the surveillance technicians, (2) the Board did not give due consideration to the status of security in modern casinos, (3) surveillance technicians could control what surveillance/security personnel viewed via surveillance camera due to their access to the equipment and surveillance-critical areas of the casino, and (4) surveillance technicians were tasked with enforcing rules against fellow employees.

The arguments asserted by the Employer have been previously raised in *Station GVR Acquisition, LLC*, Case 28-RC-203653, in *NP Palace LLC*, Case 28-RC-211644, and in *NP Lake Mead LLC*, 28-RC-218426. In all of these cases, I found that the petitioned-for units were not "guards" as defined under Section 9(b)(3) of the Act. The Board has denied the Employer's requests for review in *Station GVR Acquisition, LLC*, 2017 WL 5969305 (Nov. 30, 2017) (unpublished order) and *NP Palace LLC*, 2018 WL 1782720 (Apr. 12, 2018) (unpublished order). The Board has not yet ruled on the Employer's request for review in *NP Lake Mead LLC*, 28-RC-218426.

The Board's reasoning in denying the Employer's request for review in *NP Palace LLC* is particularly instructive:

In denying review, we agree with the Regional Director that the D.C. Circuit's decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), is distinguishable. Unlike the employees at issue in *Bellagio*, the technicians in the present case play no special role in enforcing the Employer's rules against their coworkers and other persons beyond that of any other employee, do not control access to the Employer's surveillance technology or play a key role in its use, and do not otherwise enforce the Employer's rules in a security context. Instead, the technicians merely provide a defined, supportive role to investigators or state gaming agents through technical assistance at the request of the slot supervisors. In this respect, we reject the Employer's argument that the court's decision in *Bellagio* dispensed with the requirement that guards act to enforce the Employer's rules in a security context. Last, we observe that the technicians are part of the Employer's Slot Department, whose core function is to install and maintain the Employer's gaming machines, not

the Employer's separate Security Department, which provides traditional guard services and otherwise handles the Employer's security needs.

*NP Palace LLC*, 2018 WL 1782720 fn.1.

In the instant case, the only factor that the technicians share with those technicians in *Bellagio* is that they work in a casino. The technicians' responsibilities here are distinct from security functions. I am, therefore, refusing to find that the Petitioner cannot be certified as the representative of technicians on that basis.

### **B. The Employer's Request to Ban Electronic Devices in the Voting Area**

The Employer has requested that nobody be permitted to possess electronic devices in the polling area, positing that such devices could be used to pressure voters to "prove" how they voted. Section 102.64 of the Board's Rules and Regulations states that the purpose of pre-election hearings is to determine whether a question of representation exists. The Employer's request goes beyond that purpose, insofar as it raises an issue concerning the manner in which the election will be conducted. In any event, the Board agent assigned to conduct the election and the parties' observers can monitor the polling area to ensure electronic devices are not being used in a manner that will interfere with the required laboratory conditions for an election. If electronic devices are used in the polling area during the election in a manner that interferes with employees' free choice in the election, either party can raise the question of whether such conduct was objectionable in timely filed objections.

### **III. CONCLUSION**

Based upon the entire record in this matter, including the stipulations of the parties, and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>1</sup>

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<sup>1</sup> I find, based on the stipulations of the parties and the record evidence, that the Employer, NP Sunset LLC d/b/a Sunset Station Hotel & Casino is a Nevada limited liability company with an office and place of business in Henderson, Nevada, and is engaged in the operation of a hotel and casino, providing gaming, lodging, entertainment, and dining services. During the 12-month period ending June 29, 2018, the Employer, in conducting its business operations described above, purchased and received at its facility goods valued in excess of \$5,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.<sup>2</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada.

**Excluded:** All other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.<sup>3</sup>

There are approximately 12 employees in the unit found appropriate.

#### IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers Local 501, AFL-CIO.

##### A. Election Details

The election will be held on Thursday, July 19, 2018, from 7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m. at the Employer's facility located at 1301 West Sunset Road, Henderson, Nevada, in the Sevilla Banquet Room.

##### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 1, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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<sup>2</sup> The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

<sup>3</sup> The unit found appropriate conforms with the unit sought by Petitioner. Although there is a dispute concerning whether the unit sought in the petition is inclusive of guard employees and therefore may not be represented by the Petitioner, the parties otherwise stipulated to the classifications to be included and excluded in the unit, as set forth above.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **July 17, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 13<sup>th</sup> day of July, 2018.

/s/ Cornele A. Overstreet  
Cornele A. Overstreet, Regional Director

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO**

**Employer**

**and**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Petitioner**

Case No: 28-RC-222992  
Date Issued: July 19, 2018

Date Filed: June 29, 2018

**Type of Election  
(Check One:)**

**(If applicable check  
Either or Both:)**

☐ Stipulation

☐ 8(b) (7)

☐ Board Direction

☐ Mail Ballot

☐ Consent Agreement

☒ RD Direction

Incumbent Union (Code)

**TALLY OF BALLOTS**

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 12
2. Number of Void ballots 0
3. Number of Votes cast for **PETITIONER** 10
4. Number of Votes cast for \_\_\_\_\_ XXXXXXXX
5. Number of Votes cast for \_\_\_\_\_ XXXXXXXX
6. Number of Votes cast against participating labor organization(s) 1
7. Number of Valid votes counted (sum of 3, 4, 5, and 6) 11
8. Number of Challenged ballots 0
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 11
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for **INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO**

For the Regional Director, Region 28

Susan R. McQuinn

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For: **NP SUNSET LLC D/B/A SUNSET  
STATION HOTEL & CASINO**

For: **INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

[Signature]

[Signature]

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO**

**Employer**

**and**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Petitioner**

**Case 28-RC-222992**

**TYPE OF ELECTION: RD DIRECTED**

**CERTIFICATION OF REPRESENTATIVE**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for **INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO**, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

**UNIT:** All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada; excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.



Signed at Phoenix, Arizona on  
the 1<sup>st</sup> day of August 2018.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director



NP Sunset LLC d/b/a Sunset Station        -2-  
Hotel & Casino  
Case 28-RC-222992

August 1, 2018

Certification of Representative with Notice of Bargaining  
Obligation served to the following parties:

NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
1301 West Sunset Road  
Henderson, NV 89014

Harriet Lipkin, Attorney at Law  
DLA Piper LLP (US)  
500 8th Street NW  
Washington, DC 20004-2131

Jose Soto, Director of Organizing  
International Union of Operating Engineers  
Local 501, AFL-CIO  
301 Deauville Street  
Las Vegas, NV 89106

John M. Tomberlin Jr., Attorney at Law  
The Myers Law Group  
9327 Fairway View Place, Suite 100  
Rancho Cucamonga, CA 91730-0969

CAO/SLM/dmm

## NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,<sup>1</sup> an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

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<sup>1</sup> Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

**NP SUNSET LLC d/b/a  
SUNSET STATION HOTEL & CASINO**

**and**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 501, AFL-CIO**

**Case No. 28-RC-222992**

**EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S  
DECISION AND DIRECTION OF ELECTION AND CERTIFICATION OF  
REPRESENTATIVE**

Harriet Lipkin  
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DLA Piper LLP (US)  
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(619) 699-3402

Attorneys for Employer,  
NP Sunset LLC d/b/a  
Sunset Station Hotel & Casino

August 13, 2018

Pursuant to Section 102.67 of the National Labor Relations Board’s Rules and Regulations, NP Sunset LLC d/b/a Sunset Station Hotel & Casino (“Sunset” or “Employer”) hereby requests review of the Decision and Direction of Election (“D&DE”) issued by the Regional Director on July 13, 2018, and the Certification of Representative (“Certification”) (collectively, the “Decisions”) issued by the Regional Director on August 1, 2018.

## **I. INTRODUCTION**

The Petitioner, International Union of Operating Engineers Local 501, AFL-CIO (“Union” or “Petitioner”), seeks to represent a unit composed of all slot technicians, utility technicians (collectively, the “Technicians”) and slot mechanics at the Employer’s facility. A core function of the Technicians’ duties is to protect the Employer’s property and assets from fraud and theft. Sunset presented overwhelming and undisputed evidence that the Technicians enforce the Employer’s rules and policies to prevent fraudulent payouts; protect against counterfeit currency and cash-out tickets; safeguard the Employer against fraudulent claims of game malfunctions, lost credits, or failure to pay winning hands; verify game settings to ensure that payout percentages have not been intentionally or inadvertently altered; investigate and address machines that display an irregular payout pattern; and protect the Employer from tampering, advantage play, and physical and software vulnerabilities, among other duties. In short, they “enforce against employees and other persons rules to protect [the] property of the employer” and are therefore “guards” within the meaning of the Act. *See* 29 U.S.C. § 159(b)(3).

The Regional Director disregarded this undisputed evidence, focusing instead on the thoroughly discredited notion that only prototypical plant security guards who perform police-like functions – such as physically confronting guests, wearing “guard-type” uniforms and carrying firearms – are guards under the Act. That reasoning was recently rejected by the D.C. Circuit in

*Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017); is inconsistent with the plain language of the Act; departs from historical Board precedent; and, as pointed out in *Bellagio*, is premised on a stagnant view of the Act that fails to account for the “peculiar” realities of an “ultramodern luxury casino.” The Regional Director’s reliance on that reasoning was plain error.

Accordingly, there are compelling reasons to grant this review in that: (1) the Decisions depart from officially-reported Board precedent; (2) the Decisions rely on clearly erroneous and prejudicial factual determinations; and (3) the Regional Director committed prejudicial error. Alternatively, to the extent the Decisions correctly apply Board precedent – namely *Boeing Co.*, 328 N.L.R.B. 128 (1999) – that precedent is simply wrong, inconsistent with the plain language of the Act, conflicts with better-reasoned Board and federal case law, and should be overturned.

## **II. STATEMENT OF THE CASE**

On June 29, 2018, the Union petitioned to represent a unit composed of all Technicians and slot mechanics at the Employer’s facility.<sup>1</sup> On July 5, 2018, the Employer filed its position statement, maintaining that the Petition must be dismissed because the Technicians are “guards” within the meaning of the Act. The pre-election hearing was held on July 9, 2018.

During the course of the pre-election hearing, the Employer presented extensive evidence, including the testimony of Nicholas L. McGuire, former Director of Slot Operations at Sunset Station<sup>2</sup>, and Richard DeGuise, a former Nevada Gaming Control Board Agent, that its

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<sup>1</sup> The Employer does not employ any “slot mechanics” at Sunset. (Ex. C, Pre-Election Tr. at 15:17-19, 16:4-7.)

<sup>2</sup> Nicholas L. McGuire was the former Director of Slot Operations at Sunset until one month prior to the pre-election hearing and is currently the Director of Slot Operations at its affiliate Santa Fe Station. No current Director of Slot Operations exists at Sunset. He testified that the current job descriptions for the Technicians have been the same since June 2008 and are the same as the ones applicable to Santa Fe Station. (*Id.* at 12:18-13:14, 68:11-69:11.)

Technicians enforce its rules and policies in order to protect its property and assets (*i.e.*, funds).<sup>3</sup>

For instance, the Employer presented undisputed evidence that the Technicians:

- Maintain, investigate and verify bill validators to protect the Employer against counterfeit currency, counterfeit cash-out tickets, claims that the machine failed to correctly pay or credit a guest, and other attempted theft and fraud that happen on a daily basis. The Technicians are the *only* hourly employees on the Employer's property with technical expertise to fully investigate and verify such issues; hence, the supervisors give great deference to the Technicians' findings and conclusions and are relied upon them on a near constant basis to detect and investigate potential fraud. (Ex. C, Pre-Election Tr. at 16:9-20, 17:1-8, 18:3-20:2, 22:5-21, 24:16-26:20; *see also* Ex. D, Er. Ex. 1 to Pre-Election Hearing.)
- Protect the Employer from fraudulent claims by enforcing the Employer's procedures to verify jackpots with a witness in place and sign jackpot verification sheets before payouts. Indeed, the decision of the Employer on whether to payout a jackpot – anything over \$100,000 on the slot machines – *always* follows the investigation and recommendation of the Technicians. (*Id.* at 32:19-34:8; *see also* Er. Ex. 2 to Pre-Election Hearing.)<sup>4</sup>
- Protect the Employer from fraudulent claims of game malfunctions, lost credits, or failures to payout winning hands by investigating and verifying guests' claims. The technicians' findings and conclusions are given basis to the supervisors' final decision. (*Id.* at 20:19-21:7, 26:3-20, 27:21-28:8.)
- Review and address reports from manufactures outlining new vulnerabilities and issues with machine software; individually check machines for vulnerabilities, fix vulnerabilities in games, and report any issues. (*Id.* at 34:25-35:25, 37:6-38:24; *see also* Er. Ex. 3 to Pre-Election Hearing.)
- Implement the Employer's policies to ensure that newly-purchased machines are set up correctly in all aspects; failure to properly verify the settings could expose Employer to significant gaming losses. (*Id.* at 41:2-42:4.)
- Monitor, inspect and verify slot machines that have higher-than-expected payout ratios. (*Id.* at 42:21-43:20, 45:10-46:9; *see also* Er. Ex. 4 to Pre-Election Hearing.)

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<sup>3</sup> The Parties stipulated to admitting the transcript of Richard DeGuise testimony from NP Palace LLC and International Union of Operating Engineers Local 501, AFL-CIO pre-election hearing, 28-RC-211644 (Dec. 27, 2017), as Joint Exhibit 1, as the witness' testimony in this matter would be substantively identical to his prior testimony. (*Id.* at 9:19-10:16; *see also* Ex. E.)

<sup>4</sup> All cited transcript pages and Employer exhibits from the pre-election hearing are attached under Exhibits C and D, respectively.

- Identify and investigate mistakes or intentional misconduct by other Technicians by reviewing machine data and reporting findings to the supervisor. The Technicians are the *only* hourly employees within the slot department who are prohibited from gambling at the Employer's properties due to their insider information on the performance of specific slot machines; failure to enforce Employer's policies against other Technicians could expose Employer to significant gaming losses. (*Id.* at 48:15-49:9, 49:15-19, 60:7-15, 60:20-61:24, 62:2-13, 62:18-63:5, 77:17-25; *see also* Er. Ex. 5 to Pre-Election Hearing.)
- Are entrusted with all types of slot machine access keys, which – if used nefariously – would allow an individual to alter game outcomes and obtain access to the cash within the machine. (*Id.* at 50:8-51:22, 52:22-53:18; *see also* Er. Ex. 6 to Pre-Election Hearing; Ex. E, Jt. Ex. 1 to Pre-Election Hearing at 68:4-14.)<sup>5</sup>
- Enforce the Employer's rules and policies against underage gaming, which protects the Employer against both legal liability and the potential loss of its gaming license. (Pre-Election Tr. at 55:2-7, 55:25-56:16, 57:3-18, 58:10-14.)
- Enforce the Employer's rules and policies against underage drinking by directly checking the guests' photo IDs, or escalating the matter to their supervisor or security as necessary. (*Id.* at 58:15-59:6.)
- Monitor the casino floor for banned or otherwise unauthorized guests or team members and for any suspicious activities to prevent fraudulent or illegal transactions. (*Id.* at 56:6-16, 59:16-21, 60:2-6.)
- Play an integral and indispensable role in assisting the Nevada Gaming Control Board to investigate gaming irregularities and disputes – indeed, without the Technicians, the Nevada Gaming Control Board *cannot* investigate and resolve the disputes and issues. (Jt. Ex. 1 to Pre-Election Hearing at 69:23-70:6, 71:2-73:8.)
- Play a critical role in assisting the Nevada Gaming Control Board by forming probable cause to effect an arrest when guests are detained for engaging in attempted theft or fraud. (*Id.* at 65:10-14, 73:9-74:6.)

Despite this overwhelming evidence, on July 13, 2018, the Regional Director issued the D&DE and rejected the Employer's contention that the petitioned-for unit was comprised of guards. (Ex. A.) The election was held on July 19, 2018, and the Petitioner received a majority of the valid votes cast. On August 1, 2018, the Regional Director certified the Union as the exclusive representative of the petitioned-for unit. (Ex. B.)

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<sup>5</sup> All cited transcript pages from Joint Exhibit 1 from the pre-election hearing are attached under Exhibit E.

### III. THE TECHNICIANS ARE STATUTORY “GUARDS”

Section 9(b)(3) of the Act defines a guard as a person employed to “**enforce against employees and other persons rules to protect [the] property of the employer** or to protect the safety of persons on the employer’s premises . . . .” *Id.* (emphasis added).

Consistent with the plain language of the statute, the Board has repeatedly held that the definition of “guard” is not limited to notions of a prototypical plant security guard, but includes employees who more broadly enforce rules against employees or patrons to protect the Employer’s property or assets. For instance, in *A.W. Schlesinger Geriatric Ctr., Inc.*, 267 N.L.R.B. 1363 (1983), the Board considered the “guard” status of two maintenance employees who walked the employer’s premises and – in addition to their maintenance duties – were authorized to ask that a trespasser or other employee cease creating a disturbance or that the unauthorized person leave. The Board found that, “although the maintenance employees have no special training as guards and do not wear guard uniforms or carry firearms, we conclude that the two night and weekend maintenance employees are employed for security purposes in addition to their maintenance duties.” *Id.* at 1364. Significantly, the Board found that the maintenance employees were responsible for keeping unauthorized persons off the premises, even though they had been instructed to contact a supervisor or law enforcement officer first and to avoid confrontation if possible. The Board concluded that it was “sufficient that they possess and exercise responsibility to observe and report infractions, as this is ***an essential step in the procedure for enforcement of the [employer’s] rules.***” *Id.* Further, the Board found it “not determinative that [these duties were] not their only function.” *Id.*; *see, e.g., Rhode Island Hosp.*, 313 N.L.R.B. 343, 346-47 (1993) (finding that shuttle van drivers were “guards”; “[A]lthough one of their primary duties is to transport employees from building to building, they are also charged with the responsibility of



being on the lookout for and reporting security problems or rules violations.”); *MGM Grand Hotel*, 274 NLRB 139, 1398-40 (1985) (fire alarm and security system operators fell within statutory definition of “guard” even where sole duties were to observe and report); *Am. Dist. Tel. Co.*, 160 N.L.R.B. 1130, 1136 (1966) (“guard” status is not limited to employees who enforce rules against other employees); *McDonnell Aircraft Co. v. NLRB*, 827 F.2d 324, 326-27 (8th Cir. 1987) (to qualify as a “guard” the performance of guard duties need not be the employee’s only function, and collecting cases holding that “unarmed courier service drivers,” “fitting room checkers,” “armored car guards,” and “receptionists, fire patrolmen, chauffeurs and investigators” were “guards” under the Act); *see also Walterboro Mfg. Corp.*, 106 NLRB 1383, 1384 (1953) (“It is the nature of the duties of guards and not the percentage of time which they spend in such duties which is controlling.”).

Similarly, that the Technicians do not themselves personally confront individuals or resolve instances of misconduct is not dispositive in determining guard status. In *Wright Mem’l Hosp.*, 255 N.L.R.B 1319, 1320 (1980), the Board concluded that ambulance drivers who were “on the lookout for fire, theft, vandalism, and unauthorized personnel” were guards under the Act even though the drivers, upon discovering an irregularity or violation, took “no action on their own” but instead informed a department head who would then take action. The Board reasoned that it was sufficient that the drivers had “responsibility to observe and report infractions,” an “essential step in the procedure for enforcement of [the employer’s] rules,” and that it was “immaterial” that the drivers did not themselves enforce the employer’s rules. *See also Local 3, Int’l Bhd. of Elec. Workers v. NLRB*, 1987 WL 14923 at \*1 (S.D.N.Y. Jul. 22, 1987) (electronic technicians were guards within the meaning of the Act where they monitored the fire management system and notified the appropriate authorities in the event of a problem); *Tac/temps & Phila.*

*Coca-Cola Bottling Co.*, 314 N.L.R.B. 1142, 1143 (1994) (checkers who simply reported discrepancies in product count to management were not “guards” because they did not actually investigate whether theft occurred or enforce specific rules concerning theft).

In *Boeing Co.*, 328 N.L.R.B. 128 (1999), the Board departed from this precedent, holding that “guard responsibilities include [only] those typically associated with traditional police and plant security functions,” such as weapons training, wearing “guard-type” uniforms, and having authority to “compel” compliance with the employer’s rules. *Id.* at 130. As pointed out by Member Brame in his dissent, the Board’s new formulation of the test for “guard” status was inconsistent with the plain text of the statute, the Eighth Circuit’s decision in *McDonnell Aircraft*, and historic Board precedent. *Id.* at 133-34 (Brame, dissenting). Indeed, the case upon which *Boeing* relied for most of its analysis – *Burns Sec. Servs.*, 300 N.L.R.B. 298 (1990) – had been set aside by the Eighth Circuit in *BPS Guard Servs., Inc. v. NLRB*, 942 F.2d 519 (8th Cir. 1991) before *Boeing* was even issued. Put simply, *Boeing*’s holding that only persons who perform “traditional” police-like functions are guards is poorly reasoned, inconsistent with the plain language of the statute and Board precedent, and has been repeatedly rejected by the federal appellate courts.<sup>6</sup>

Indeed, the D.C. Circuit’s recent decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839, 848-49 (D.C. Cir. 2017), again rejected the Board’s narrow definition of “guard” and found – consistent with the Board’s historic view – that a casino’s surveillance technicians were “guards” under Section 9(b)(3) of the Act. The D.C. Circuit expressly rejected the Board’s argument that the technicians could not be guards simply because they “made no rounds,” and did not carry out functions akin to traditional plant security guards (*i.e.*, they did not confront guests, carried no

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<sup>6</sup> The Board has repeatedly overruled poorly-reasoned precedent when necessary to return to well-established doctrine with a sound basis in the Act. See, e.g., *Hy-Brand Indus. Contractors*, 365 N.L.R.B. No. 156 (2017).

weapons, and did not wear security uniforms or badges) on the basis that there is no statutory requirement whatsoever that a guard must personally confront other individuals. *See id.* The D.C. Circuit affirmed that it is sufficient that the casino’s technicians play an integral role in effectuating the employer’s rules and policies and that their lack of direct contact with the wrongdoers did “not detract from their guard status.” *Id.* at 849 (quoting *A.W. Schlesinger Geriatric Ctr., Inc.*, 267 N.L.R.B. at 1364). Notably, the fact that the technicians acted at the direction of human resources and other supervisory personnel and that their duties to report suspicious activities were shared by all other casino employees did not limit the Court from finding the technicians to be “guards” within the meaning of the Act. The Court’s ruling considered key factors not given due weight by the Board, such as the technicians’ duties in deterring, detecting, reporting, and investigating suspicious activity, the modern context in which their enforcement took place, their role in preventing and investigating misconduct by other employees, and their role in protecting the Employer’s valuable assets generally. *Id.* at 849-52. In particular, the Board failed to give due weight to the “peculiar” context of an “ultramodern luxury casino” and the “technological advance[s]” in hotel-casino security. *Id.* at 850-51. In short, the D.C. Circuit implicitly rejected the Board’s approach in *Boeing* and concluded that, because the evidence, taken as a whole, demonstrated that surveillance technicians “perform an essential step in the enforcement of rules to protect the casino’s property and patrons, including enforcement against their fellow employees” they were guards within the meaning of the Act, notwithstanding their lack of “traditional” guard duties. *Id.* at 849.

Here, the Regional Director committed the same errors as the Board in *Bellagio*. First, the Regional Director disregarded the overwhelming and undisputed evidence that a core function of the Technicians’ duties is to enforce rules against casino guests and other third-parties to protect

the Employer's property and assets, specifically those associated with the gaming machines. Instead, it focused exclusively on whether the Technician's perform "traditional" security functions, such as physically confronting guests. For example, in rejecting the Employer's contention that the petitioned-for unit was composed of guards, the Regional Director acknowledged that the Technicians play an essential role in detecting, investigating and reporting fraud with respect to gaming machines on the Employer's property and in verifying jackpots against fraudulent payouts, but nonetheless held that "the Technicians do not confront people but are instead expected to report to the Employer." (Ex. A.) Likewise, the Regional Director focused on the fact that the Technicians are not interchangeable with the Employer's more traditional security officers – ignoring that the technicians in *Bellagio* (as well as the ambulance drivers, fitting room checkers, chauffeurs, firemen, and maintenance employees in the cases discussed above) were also not interchangeable with traditional police-like security officers. Most critically, the Regional Director focused on superficial factual distinctions between this case and *Bellagio* – such as that the Technicians are not involved in "sting" operations or that they are not permitted to enter surveillance rooms – but missed the actual point of *Bellagio*: that the statutory definition of "guard" encompasses more than prototypical security officers.

Likewise, the Regional Director failed to consider the context of an "ultramodern luxury casino." As explained by the Employer's witnesses, with the evolution from mechanical to electronic slot machines, the role of the Technicians is no longer that of a mechanical repairman. Nor is the primary risk to the Employer's assets that a casino patron will physically smash a slot machine and flee with a can of quarters. Rather, in the modern context, the danger is unscrupulous individuals who try to take advantage of all aspects of the Employer's slot machine operation, ranging from the initial bill validation, to fraudulent payouts and tampering, to claims of lost

credits, to fraudulent cash-out tickets. *See Bellagio*, 863 F.3d at 842, 850-51. Put simply, the evolving nature of the contemporary casino *requires* the Board to consider this context in determining what constitutes a “guard” under the Act. Failing to apply the 9(b)(3) on the facts in this case would be an affirmation of the antiquated views that the Board has consistently refused to enforce in other contexts.<sup>7</sup>

The undisputed evidence is that the Technicians’ direct responsibility to protect the Employer’s property from such fraud and theft is an essential step in enforcing the Employer’s rules and policies. In particular, the Technicians’ power to exercise a significant influence over decisions concerning the slot machine operations due to their unique “know-how” and access to the thousands of gaming machines on the property – making up the majority of all gaming activity – makes these Technicians an integral part of the Employer’s efforts to safeguard its property and assets. Thus, because they play a special role in enforcing the Employer’s rules against “other persons” to protect the Employer’s “property” and assets relating to slot machines, they are “guards” within the meaning of the Act.

#### **IV. CONCLUSION**

For the reasons set forth above, the Decisions should be set aside and the Petition should be dismissed.

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<sup>7</sup> The Board has consistently recognized that application of the Act in the modern economy requires certain Board policies and doctrines to be reconsidered. *See, e.g., Purple Commc’ns.*, 361 N.L.R.B. No. 126 (2014).

Date: August 13, 2018

Respectfully Submitted,

/s/ Harriet Lipkin

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## CERTIFICATE OF SERVICE

I hereby certify this 13th day of August, 2018, that a copy of the Employer's Request for Review of the Regional Director's Decision and Direction of Election and Certification of Representative, including Exhibits, was electronically served on:

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Region 28  
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/s/ Christine Yang  
An Employee of DLA Piper LLP (US)

# Exhibit A



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO**

**Employer**

**and**

**Case 28-RC-222992**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Union of Operating Engineers Local 501, AFL-CIO (Petitioner) seeks to represent a unit of full-time and regular part-time slot technicians, utility technicians (collectively, technicians) and slot mechanics employed by NP Sunset LLC d/b/a Sunset Station Hotel & Casino (the Employer) at its Henderson, Nevada facility. The Employer contends that Petitioner cannot be certified as the representative of the employees in the petitioned-for unit under Section 9(b)(3) of the National Labor Relations Act (the Act) because the unit includes guards, and Petitioner admits employees other than guards to membership. The Employer also requested the imposition of a ban on electronic devices in the voting area.

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board decisions, I find that technicians are not guards. Additionally, I find that it is not appropriate for me to impose a ban on electronic devices in the voting area in these pre-election proceedings.

**I. FACTS**

The Employer operates the Sunset Station Hotel & Casino in Henderson, Nevada. The Employer's facility includes gaming space of over 100,000 square feet occupied, in part, by approximately 2,100 gaming machines. The Employer employs approximately 1,200 employees.

The petitioned-for unit includes slot mechanics and technicians. However, the only witness at the hearing testified that the Employer does not currently employ any slot mechanics. The Employer employs approximately twelve technicians: nine slot technicians and three utility technicians. Utility technicians are the entry level position for technicians, essentially slot technicians in training. Generally, technicians are responsible for maintaining and ensuring

proper working order of the gaming machines. These technicians are involved in all aspects of machine conversions and relocations, and perform routine and advanced machine maintenance.

Technicians work in the Slot Department. The Slot Department is under the direction of Director of Slot Operations. The slot department has two separate sides: the technical side and the operations side. Reporting to the Director of Slot Operations on the technical side are the Slot Tech Manager and the Tech Project Supervisor. The technicians report to the Tech Project Supervisor.

Reporting to the Director of Slot Operations on the Operations side is the Slot Operations Manager, the Slot Shift Manager, the Slot Lead Guest Service Ambassador, and the Guest Service Ambassadors (GSAs).

Technicians spend approximately 75% to 80% percent of their working time on the gaming floor. They are charged with installing, repairing, and maintaining various facets of the gaming machines, including all test and support equipment, including but not limited to currency counters, signs, progressive and media hardware, and related equipment.

In order to perform their work, technicians carry keys that provide access to the machines. Key issuance is controlled and monitored by the Key Watcher or the Slot Office. Guest service attendants, and supervisors and shift managers within the Slot Department also may possess such keys. Loss of control of keys or taking keys off property is considered negligence and will result in corrective counseling up to and including termination. If technicians lose keys or take keys off property, they are required to immediately notify a slot lead or above who notifies surveillance, security, and senior slot management. Technicians are responsible for interacting with agents of the Nevada Gaming Control Board (NGCB) to facilitate and assist with the NGCB's inspection of machines.

In addition to duties related to machine maintenance, technicians are tasked with performing various functions to protect gaming machines against fraud and improper manipulation, which could lead to financial losses for the Employer. Technicians assist their supervisors or shift managers to investigate customer claims of machine malfunction, which, if verified, would lead to the Employer paying out a customer's legitimate winnings. If the customer's claim is not verified, then the claim would be denied. Moreover, technicians are responsible for fixing any machine malfunction, as well as performing manufacturer-recommended repairs that arise when vendors become aware of vulnerabilities or malfunctions in their machines.

Besides aiding with claims of gaming machine malfunction, technicians assist their supervisors or shift managers to investigate possible fraud by customers. For example, a technician may be asked by their supervisor or shift manager to assist with determining whether there is evidence of tampering if there are irregular payouts on a machine. The Employer would not be able to detect certain kinds of fraud without the work performed on its machines by its technicians. Due to their intimate knowledge of the gaming systems, technicians are prohibited

from gambling at the Employer's facility. The Tech Project Supervisor, Slot Tech Manager, and Director of Slot Operations are also prohibited from gambling at the Employer's facility. The record does not reflect whether the Employer's security guards are permitted to gamble at its facility, however, most of the Employer's employees are permitted to gamble at its facility.

All of the Employer's employees are obligated to be alert for evidence of other malfeasance such as underage gambling and drinking. Instances of underage gambling could lead to fines by the NGCB and the revocation of Employer's gaming license. Employees on the gaming floor, such as technicians, GSAs, bartenders, and servers, have a heightened responsibility. Technicians would report prohibited activity to the slot team supervisor, shift manager, or security. Technicians' duties in this regard are no greater than other employees who work on the gaming floor. All employees are responsible for reporting underage gambling and drinking.

The Employer has a Security Department, separate from its Slot Department and its Surveillance Department, with different management within each department. Technicians do not carry handcuffs, firearms, or other weapons. They receive no training in typical security functions. They are not expected to restrain or apprehend guests or respond physically with force. Technicians wear black uniforms specific to technicians only, with nametags on one side of their uniform shirts and a property patch designating Stations Casino on the other side of their uniform shirts. Technicians also wear tool belts to hold the tools they use on the machines and carry radios. Technicians do not wear or carry any badges.

Security personnel also wear black uniforms, but they are different from the black uniform worn by technicians. Unlike technicians, security personnel wear badges and a belt designed to carry their handcuffs, guns, batons, and radios.

The record does not reveal that the technicians are permitted to enter any surveillance room. Technicians do not participate in "sting" operations to detect malfeasance by employees or customers. There is no record evidence that the technicians have any involvement in the confrontation, reporting, or investigations of other employees, except to the extent that inspection of a gaming machine might be required. The record lacks any evidence that technicians have an obligation to report employee misconduct beyond that of other employees.

Security personnel are tasked with patrolling the inside and outside of the Employer's facility and investigating customer-related disturbances or suspected malfeasance by employees. Security personnel and technicians are not interchangeable and do not perform each other's work duties. Whenever technicians move money from machines, they are required to contact security personnel. The record does not further detail whether security personnel access machines or are permitted to gamble at the Employer's facility.

## II. ANALYSIS

### A. Non-Guard Status of Technicians

Section 9(b)(3) of the Act prohibits the Board from certifying a labor organization as the representative of a guard unit if the labor organization has members who are non-guard employees. The Employer asserts the technicians are guards because the core function of a technician is to enforce the Employer's rules and policies against guests and employees to safeguard the Employer's property and assets. The parties stipulated that Petitioner represents non-guard employees as a complement of its membership.

To be a guard under the Act, an individual must enforce rules to protect the property of the employer's premises against employees and other persons. *Reynolds Metal Co.*, 198 NLRB 120, 120 (1972). "[T]he Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities." *Boeing Co.*, 328 NLRB 128, 130 (1999).

"Guard responsibilities include those typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status." *Id.* The Board has rejected the assertion that an employee's "responsibility to report security problems confers guard status." *Id.* at 131.

While the Employer instructs technicians, as part of their job duties, to report to the Employer evidence of tampering with gaming machines or other fraudulent conduct, "[a] reporting function alone, without significant security-related responsibilities, [does not] confer guard status." *Id.* In *Boeing*, the Board rejected an assertion firefighters who were required "to be alert for suspicious activity while on their tours and question unfamiliar individuals on the premises" as well as "report suspicious activity to the security department rather than deal directly with it themselves" were guards. *Id.* at 131. The Board determined that "to the extent that the firefighters'...duties conferred upon them some limited guard responsibilities, those responsibilities were only a minor and incidental part of their overall responsibilities...and, thus, do not transform the firefighters into statutory guards." *Id.* at 131.

The Employer has not supported its claim that technicians are guards. The evidence presented does not show that technicians enforce rules to protect property against employees and other persons. From the evidence of record, technicians do not perform any of the traditional guard responsibilities identified by the Board in *Boeing*. Technicians were not hired to perform any security functions, and perform no security functions beyond what would be expected of any other employees.

Any guard-like responsibilities conferred on technicians are, like the firefighters in *Boeing*, a minor and incidental part of their primary responsibility of providing services to guests gambling on the Employer's gaming machines. As stated above, technicians do not confront people but are instead simply expected to report to the Employer.

The Employer pointed to the circuit court decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), in asserting that because technicians play an integral role in detecting and investigating loss and malfeasance in connection with gaming machines, technicians are guards. In that decision, the key issue was whether surveillance technicians were guards under the Act. In finding that the surveillance technicians were guards, the Court focused on four facts: (1) that certain surveillance/security personnel could not perform their job functions without the surveillance technicians, (2) the Board did not give due consideration to the status of security in modern casinos, (3) surveillance technicians could control what surveillance/security personnel viewed via surveillance camera due to their access to the equipment and surveillance-critical areas of the casino, and (4) surveillance technicians were tasked with enforcing rules against fellow employees.

The arguments asserted by the Employer have been previously raised in *Station GVR Acquisition, LLC*, Case 28-RC-203653, in *NP Palace LLC*, Case 28-RC-211644, and in *NP Lake Mead LLC*, 28-RC-218426. In all of these cases, I found that the petitioned-for units were not "guards" as defined under Section 9(b)(3) of the Act. The Board has denied the Employer's requests for review in *Station GVR Acquisition, LLC*, 2017 WL 5969305 (Nov. 30, 2017) (unpublished order) and *NP Palace LLC*, 2018 WL 1782720 (Apr. 12, 2018) (unpublished order). The Board has not yet ruled on the Employer's request for review in *NP Lake Mead LLC*, 28-RC-218426.

The Board's reasoning in denying the Employer's request for review in *NP Palace LLC* is particularly instructive:

In denying review, we agree with the Regional Director that the D.C. Circuit's decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), is distinguishable. Unlike the employees at issue in *Bellagio*, the technicians in the present case play no special role in enforcing the Employer's rules against their coworkers and other persons beyond that of any other employee, do not control access to the Employer's surveillance technology or play a key role in its use, and do not otherwise enforce the Employer's rules in a security context. Instead, the technicians merely provide a defined, supportive role to investigators or state gaming agents through technical assistance at the request of the slot supervisors. In this respect, we reject the Employer's argument that the court's decision in *Bellagio* dispensed with the requirement that guards act to enforce the Employer's rules in a security context. Last, we observe that the technicians are part of the Employer's Slot Department, whose core function is to install and maintain the Employer's gaming machines, not

the Employer's separate Security Department, which provides traditional guard services and otherwise handles the Employer's security needs.

*NP Palace LLC*, 2018 WL 1782720 fn.1.

In the instant case, the only factor that the technicians share with those technicians in *Bellagio* is that they work in a casino. The technicians' responsibilities here are distinct from security functions. I am, therefore, refusing to find that the Petitioner cannot be certified as the representative of technicians on that basis.

### **B. The Employer's Request to Ban Electronic Devices in the Voting Area**

The Employer has requested that nobody be permitted to possess electronic devices in the polling area, positing that such devices could be used to pressure voters to "prove" how they voted. Section 102.64 of the Board's Rules and Regulations states that the purpose of pre-election hearings is to determine whether a question of representation exists. The Employer's request goes beyond that purpose, insofar as it raises an issue concerning the manner in which the election will be conducted. In any event, the Board agent assigned to conduct the election and the parties' observers can monitor the polling area to ensure electronic devices are not being used in a manner that will interfere with the required laboratory conditions for an election. If electronic devices are used in the polling area during the election in a manner that interferes with employees' free choice in the election, either party can raise the question of whether such conduct was objectionable in timely filed objections.

### **III. CONCLUSION**

Based upon the entire record in this matter, including the stipulations of the parties, and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>1</sup>

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<sup>1</sup> I find, based on the stipulations of the parties and the record evidence, that the Employer, NP Sunset LLC d/b/a Sunset Station Hotel & Casino is a Nevada limited liability company with an office and place of business in Henderson, Nevada, and is engaged in the operation of a hotel and casino, providing gaming, lodging, entertainment, and dining services. During the 12-month period ending June 29, 2018, the Employer, in conducting its business operations described above, purchased and received at its facility goods valued in excess of \$5,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.<sup>2</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada.

**Excluded:** All other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.<sup>3</sup>

There are approximately 12 employees in the unit found appropriate.

#### IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers Local 501, AFL-CIO.

##### A. Election Details

The election will be held on Thursday, July 19, 2018, from 7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m. at the Employer's facility located at 1301 West Sunset Road, Henderson, Nevada, in the Sevilla Banquet Room.

##### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 1, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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<sup>2</sup> The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

<sup>3</sup> The unit found appropriate conforms with the unit sought by Petitioner. Although there is a dispute concerning whether the unit sought in the petition is inclusive of guard employees and therefore may not be represented by the Petitioner, the parties otherwise stipulated to the classifications to be included and excluded in the unit, as set forth above.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **July 17, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.



No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Phoenix, Arizona, this 13<sup>th</sup> day of July, 2018.

/s/ Cornele A. Overstreet  
Cornele A. Overstreet, Regional Director

# **Exhibit B**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28

NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO

Employer

and

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO

Petitioner

Case 28-RC-222992

TYPE OF ELECTION: RD DIRECTED

**CERTIFICATION OF REPRESENTATIVE**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for **INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO**, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

**UNIT:** All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada; excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.



Signed at Phoenix, Arizona on  
the 1<sup>st</sup> day of August 2018.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director

## NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,<sup>1</sup> an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

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<sup>1</sup> Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

# **Exhibit C**

1           Issues to be litigated: Would the Employer please state  
2 his position on the issue to be litigated in this matter?

3           MR. LAC: Yes. The Employer's position is that the  
4 proposed unit is not appropriate because it is composed of  
5 guards within the meaning of the National Labor Relations  
6 Act. Petitioner cannot be certified as a bargaining  
7 representative of the unit because it admits to membership  
8 employees other than guards.

9           HEARING OFFICER McGUIRE: And can the Petitioner state  
10 his position on that?

11          MR. TOMBERLIN: Yeah, we don't have guards in this unit.  
12 Therefore, the petitioned-for unit is appropriate.

13          HEARING OFFICER McGUIRE: So the burden of proof will  
14 lie with the Employer to present evidence supporting its  
15 position. You must present specific, detailed evidence in  
16 support of your position. General conclusionary statements  
17 by witnesses will not be sufficient.

18          Okay, Employer, please present your first witness.

19          MR. LAC: At this time, we would like to offer a  
20 stipulation as to one of the Employer's witnesses,  
21 Mr. Richard A. DeGuise, Jr. We would, we would submit to the  
22 Board a parties' agreement that Mr. DeGuise's testimony be  
23 stipulated for purposes of this matter because the testimony  
24 he will be providing here is applicable or is similar to  
25 prior testimony he's already given on similar matters. And

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1 the testimony we would like to stipulate to is from in  
2 matter, in the matter of Palace Station and International  
3 Union of Operating Engineers, Local 501, AFL-CIO, Case Number  
4 28-RC-211644.

5 HEARING OFFICER McGUIRE: And would that be his full  
6 testimony from the transcript?

7 MR. LAC: Yes. Yes, his initial -- the direct  
8 examination, cross-examination, and redirect.

9 HEARING OFFICER McGUIRE: Do you have a copy of that to  
10 present?

11 MR. LAC: Yes. We'd like to submit Joint Exhibit Number  
12 1 -- we move to submit Joint Exhibit Number 1 to the -- to  
13 the record.

14 **(Joint Exhibit 1 marked for identification.)**

15 HEARING OFFICER McGUIRE: Okay. Mr. Tomberlin?

16 MR. TOMBERLIN: Petitioner so stipulates.

17 HEARING OFFICER McGUIRE: Okay. Can you hand him a  
18 copy?

19 MR. LAC: Yeah.

20 HEARING OFFICER McGUIRE: So that's Joint Exhibit 1.

21 **(Joint Exhibit 1 received in evidence.)**

22 HEARING OFFICER McGUIRE: Okay, you may continue.

23 MR. TOMBERLIN: At this time Petitioner would move to  
24 exclude any witnesses or potential witnesses that might hear  
25 the testimony of whoever is going to be called.

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1 McGuire as a witness.

2 MR. McGUIRE: Sit up here?

3 HEARING OFFICER McGUIRE: Yes, please, that little  
4 chair. Raise your right hand.

5 (Whereupon,

6 **NICHOLAS L. McGUIRE**

7 was called as a witness by and on behalf of the Employer and,  
8 after having been duly sworn, was examined and testified as  
9 follows:)

10 HEARING OFFICER McGUIRE: Please have a seat. Would you  
11 please state and spell your full name?

12 THE WITNESS: Yes. My name is Nicholas L. McGuire,  
13 Nicholas Lee McGuire, last name spelled M-c, capital  
14 G-u-i-r-e.

15 MR. LAC: Okay?

16 HEARING OFFICER McGUIRE: Please proceed.

17 **DIRECT EXAMINATION**

18 Q. BY MR. LAC: Mr. McGuire, what is your current position?

19 A. I am the slot director at Santa Fe Station.

20 Q. Are you currently employed by Station Casinos; is that  
21 correct?

22 A. I am.

23 HEARING OFFICER McGUIRE: One moment. You are the slot  
24 director of Santa Fe Station?

25 THE WITNESS: I am currently.

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1 HEARING OFFICER McGUIRE: Not the current property that  
2 we are looking at?

3 MR. LAC: He's the -- Mr. McGuire is the former --

4 Q. BY MR. LAC: Are you the former -- what is your former  
5 position?

6 A. I am the former director at Sunset Station for the last  
7 2 years. It ended about a month ago.

8 Q. And there is no current -- is there a current slot  
9 director a Sunset Station?

10 A. There is not.

11 Q. How long, how long were you the slot director at Sunset  
12 Station?

13 A. Almost 2 years.

14 Q. Two years.

15 MR. TOMBERLIN: I just would like a continuing objection  
16 that his testimony is not relevant as far as past practices.  
17 We're here about current practices and the practices that  
18 would be in effect at the time of the election.

19 HEARING OFFICER McGUIRE: You're here to -- for the  
20 practices that are in effect at the time of the election  
21 right now, and I don't see a reason if he's -- you were there  
22 a month ago?

23 THE WITNESS: Um-hum.

24 HEARING OFFICER McGUIRE: And you are --

25 THE WITNESS: Yes.

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1 MR. TOMBERLIN: Is that testimony related to Sunset or  
2 generally? I'm just confused by the question.

3 MR. LAC: I asked while you were slot director at Sunset  
4 Station what were your job duties.

5 HEARING OFFICER McGUIRE: Just to be very clear, please  
6 indicate in your questions that this -- what property this  
7 applies to, his testimony would apply to with each question.

8 MR. LAC: Sure.

9 HEARING OFFICER McGUIRE: So there is no mix-up.

10 MR. LAC: Um-hum.

11 Q. BY MR. LAC: And as the slot director at Sunset Station,  
12 were you personally familiar with the day-to-day job duties  
13 and responsibilities of slot technicians?

14 A. Yes.

15 Q. What about of utility technicians?

16 A. Yes.

17 Q. What about slot mechanics, are they, are they the same  
18 as a slot technician?

19 A. Our positions at Sunset are slot techs and utility  
20 techs.

21 Q. Got it.

22 HEARING OFFICER McGUIRE: Okay, utility tech, how does  
23 -- what is the responsibilities of the utility tech as  
24 opposed to a slot tech?

25 THE WITNESS: A utility tech is more of an entry-level

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1 position, so they're more like a slot tech but still in  
2 training. So they'll do a lot of preventive maintenance and  
3 then assist the slot techs with their functions.

4 HEARING OFFICER McGUIRE: Okay. And you said they don't  
5 have any slot mechanics at Sunset Station?

6 THE WITNESS: We don't have slot mechanics. We have  
7 slot technicians.

8 HEARING OFFICER McGUIRE: Okay, continue.

9 Q. BY MR. LAC: Can you, can you briefly describe the core  
10 job functions of the technicians?

11 A. Sure. They work on the slot machines directly. They  
12 install, move, set them up, make sure they're working  
13 correctly, make sure that their -- the payoffs are correct,  
14 mechanically they're working, electronically they're working  
15 correctly.

16 Q. What is, what is the overall purpose of those functions?

17 A. The main purpose of the function is to make sure, like I  
18 said, that the payouts are correct, that the guest has a  
19 seamless experience when they're playing the slot machines,  
20 and protect the assets of the Company.

21 HEARING OFFICER McGUIRE: That was the guest has a what  
22 experience?

23 THE WITNESS: A seamless experience.

24 HEARING OFFICER McGUIRE: Seamless, thank you.

25 THE WITNESS: Yes.

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1 Q. BY MR. LAC: What types of machines are the slot  
2 technicians responsible for maintaining?

3 A. All types of machines. There is a video poker,  
4 mechanical reel, video reel, all types of slot machines, bar  
5 tops.

6 Q. Got it. Approximately how many slot machines or gaming  
7 machines are located -- are in service at Sunset Station?

8 A. About right around 2,100.

9 Q. And you mentioned you were, you were in the slot machine  
10 industry for about 19 years.

11 A. Correct.

12 Q. Can you look back -- can you think back to when you  
13 first started, were you, were you around when slot machines  
14 were prominently mechanical?

15 A. Yes.

16 Q. And would it be -- how are slot machines, the state of  
17 slot machines changed over time?

18 A. Well, they've evolved a lot since 20 years ago. They  
19 took coins, they mechanically took coins and issued coins,  
20 and mechanical reels. A lot of that has evolved into more  
21 video type slot machines, more computer type slot machines.

22 Q. Are the internal functions or operations of the machine  
23 different somehow? Like what's the -- in layman's terms,  
24 what's the fundamental difference now?

25 A. A lot of it are they're actually operated with computer

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1 boards now, and it wasn't that much back 20 years, more  
2 mechanical.

3 Q. Got it. Let's start, let's start -- let's go back to  
4 the video poker machines that you mentioned. Are there any  
5 ways in which guests might try to cheat the Company on a  
6 video poker machine?

7 A. Sure. There's ways. A lot of guests will claim that  
8 the cards didn't hold or buttons didn't function or things  
9 are not functioning the way they're supposed to. So, yeah, a  
10 lot of guests will do that, and the slot techs would assist  
11 with checking out those claims and verifying.

12 Q. You mentioned there's an issue with the hold button, you  
13 said?

14 A. Yeah.

15 Q. Can you describe that complaint?

16 A. Yeah. The video poker machine is basically you're dealt  
17 cards and you choose which ones, which cards you want to hold  
18 by pressing the button underneath that card or touching the  
19 touch screen, either way.

20 Q. And so what will a guest claim then?

21 A. They'll claim that the -- for instance, like if they are  
22 dealt two aces and three other cards, that one of the aces  
23 didn't hold even though they pressed the button, so they'll  
24 claim that the slot machine didn't function correctly.

25 Q. What's the slot technician's role in addressing that

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1 complaint?

2 A. They'll come and actually check the game and verify that  
3 the buttons are working, mechanically that they are working  
4 correctly.

5 Q. What's the, what's the process of checking the button?

6 A. They put it in a mode where they can actually see if the  
7 button is working. They can press the button, and the little  
8 number on the screen will test from zero to one, depending on  
9 which button they're pressing, and they can verify that it  
10 actually works.

11 Q. Got it, okay. And then does the slot technician come to  
12 a conclusion or a finding?

13 A. Correct. And then they'll -- usually there is a  
14 supervisor involved at this point, too, and they will tell  
15 the supervisor and show the supervisor whether the button is  
16 working correctly or not.

17 Q. Got it. And the supervisor, does the supervisor -- what  
18 does the supervisor do with that information from the slot  
19 technician?

20 A. Well, they'll take that information into account, and  
21 then they'll talk to the guest, whoever that's making the  
22 claim that the button wasn't working correctly, what their  
23 findings were, whether the button is or not working  
24 correctly.

25 Q. Got it. Ever any occasion where a supervisor discredits

1 the slot technician's finding?

2 A. No.

3 MR. TOMBERLIN: I'm just going to object to the leading  
4 nature of the last few questions.

5 HEARING OFFICER McGUIRE: Please state the question  
6 correctly.

7 Q. BY MR. LAC: Any other examples of guests cheating in  
8 video poker or any other slot machine?

9 A. Yeah, I've seen actually guests using devices to cheat  
10 the machines. When I worked at Arizona Charlie's previously,  
11 the Stations Casinos, there were a --

12 MR. TOMBERLIN: Objection to the relevance of testimony  
13 at Charlie's or wherever that is not Sunset. We're here  
14 about Sunset today.

15 HEARING OFFICER McGUIRE: Yes. Anything at Sunset that  
16 you've seen yourself?

17 THE WITNESS: Only claims. Only false claims, not  
18 actual cheating.

19 Q. BY MR. LAC: Any other complaints about malfunctions,  
20 machine malfunctioning, any issues like that?

21 A. Yes, we've seen --

22 HEARING OFFICER McGUIRE: At Sunset Station.

23 Q. BY MR. LAC: At Sunset Station.

24 A. At Sunset Station, yes. We've seen instances where the  
25 computers malfunction and the -- things will happen, like

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1 they'll lose the memory on the slot machines. That happens  
2 often.

3 Q. What's a slot technician's role in addressing those  
4 issues?

5 A. To basically diagnose the game, to see if they can  
6 recall the memory or recall the game, get it functioning  
7 correctly.

8 Q. And let's -- can I ask you what -- to explain what a  
9 bill validator is?

10 A. Sure. A bill validator is the device that you put a  
11 bill, currency, American currency into the machine, and it  
12 validates that it is genuine and not a counterfeit.

13 Q. These are, these are on the slot machines themselves?

14 A. They are on every single slot machine.

15 HEARING OFFICER McGUIRE: Let me ask you this, would  
16 that be the same slot where a guest would put money in to  
17 play the machine?

18 THE WITNESS: That is correct.

19 HEARING OFFICER McGUIRE: And so as they put -- as the  
20 guest puts money into the machine at Sunset Station, that  
21 validator would --

22 THE WITNESS: That is correct. They put the bill in.  
23 It would draw the bill in. It uses cameras and then memory,  
24 level of actual bills, and verifies that the bill is not a  
25 counterfeit; that's correct.

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1 Q. BY MR. LAC: Do you know of any -- at Sunset Station,  
2 any issues regarding the bill validator malfunctioning or  
3 being exploited by guests?

4 A. Not at Sunset.

5 Q. Has a guest ever claimed anything as to the bill  
6 validator at Sunset about --

7 A. Guests claim. There are times when the bill validators  
8 will take a bill and not credit the machine, so it is not  
9 uncommon for guests to say -- to flag down a team member and  
10 say, hey, I put a \$100 bill in this game, and it didn't give  
11 me the credits. That does happen.

12 Q. So what's the slot technician's role in addressing that  
13 complaint?

14 A. So the slot techs would be the ones that would check out  
15 the key, to open up the bill validator can after verifying  
16 through the records whether or not a bill was accepted, which  
17 is on the actual slot machine. They'll go through the event  
18 log and see if a bill was accepted that matches what their  
19 claim was. And then they will check out a key if they still  
20 need to, to open up the actual can where the bills are stored  
21 and verify that that bill is there or not.

22 Q. Is any other employee at Sunset Station able to do that?

23 A. It's primarily a slot tech function, but the supervisors  
24 can check out the key.

25 HEARING OFFICER MCGUIRE: Any others?

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1 MR. TOMBERLIN: But it's the information that the  
2 Employer --

3 MR. LAC: We're not, we're not asking him any questions  
4 about the actual information in this, just the existence of  
5 the report.

6 MR. TOMBERLIN: Then I'd move to exclude the document,  
7 and you can have him testify that there are in fact reports  
8 made.

9 HEARING OFFICER MCGUIRE: I'm going to allow it at this  
10 time, and we'll see what the testimony is.

11 MR. LAC: Sure.

12 HEARING OFFICER MCGUIRE: And allow --

13 MR. LAC: Sure.

14 HEARING OFFICER MCGUIRE: -- the reader of the record to  
15 give it the proper weight.

16 Q. BY MR. LAC: Can you generally explain the -- are you  
17 familiar with what a bill validator report is?

18 A. Yes. This is a reject report which shows by machine the  
19 top 10 machines on the floor that did the most bill validator  
20 rejects.

21 Q. When you say bill validator rejects, what do you mean by  
22 that?

23 A. That means a guest will try to put a currency, a bill  
24 into the machine, and it's rejected by the validator.

25 Q. What would cause a machine to show up on a bill

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1 validator report?

2 A. If it's the top 10 game on the floor that rejected, it  
3 would show on this report. And it's the bills could be bills  
4 that have writing on them, so that the machine, the bill  
5 validator can't validate it. It could be torn. It could be,  
6 it could be counterfeit.

7 Q. In your experience as the slot director at Sunset  
8 Station, you received bill validator reports on a daily  
9 basis?

10 A. Daily.

11 Q. Who else receives these reports?

12 A. So it goes to the slot tech group.

13 HEARING OFFICER McGUIRE: What is the slot tech group?

14 THE WITNESS: So it would be the slot techs, a tech  
15 supervisor and tech manager, and myself.

16 Q. BY MR. LAC: And what would, what would the slot  
17 technicians do upon receiving a bill validator report?

18 A. So it's a daily function of the slot techs to take this  
19 report and go to each one of the games that are on this list,  
20 and check the validator and make sure it's functioning  
21 correctly, to clean it or make any repairs or software  
22 updates that is needed.

23 Q. At Sunset Station, are there any other hourly employees  
24 that would perform this function?

25 A. No.

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1 Q. Other than slot technicians.

2 A. Just slot technicians.

3 Q. Okay, we're done with that exhibit. Are there any  
4 instances in which guests might claim extra credits are in  
5 the machine?

6 A. Yeah, there are times when the guest will claim that  
7 they are not -- they were not paid correctly according to the  
8 slot machine.

9 Q. What circumstances would ordinarily be associated with  
10 that claim?

11 MR. TOMBERLIN: This is at Sunset Station, right?

12 Q. BY MR. LAC: At Sunset Station.

13 A. I'm trying to think of an example. A lot of times a  
14 guest will not understand the pay tables. Like, for  
15 instance, they'll say that they should have received 1,000  
16 credits instead of 100 credits, not taking into account how  
17 many credits they wagered. There are times when they put a  
18 bill in thinking that it was a \$100 bill but they only put a  
19 \$10 in, when they think that they should have more credits on  
20 the machine. There's a lot of different ways.

21 Q. Okay.

22 HEARING OFFICER MCGUIRE: Mr. Lac, before we go any  
23 further, would you like to offer this in evidence, Exhibit 1?

24 MR. LAC: Yes. I would like, I would like to move  
25 into -- move to admit Employer's Exhibit Number 1 into the

1 record.

2 HEARING OFFICER McGUIRE: And your objection was?

3 MR. TOMBERLIN: Yeah, my objection is that this document  
4 cannot be authenticated by anything that we've seen. The  
5 information on it was not testified to. Whether or not this  
6 exhibit was shown to the petitioned-for group cannot be  
7 testified to, nor can any percentages related to what's  
8 reflected here be referenced as frequently accurate or not  
9 frequently accurate.

10 HEARING OFFICER McGUIRE: Okay, understood. I am going  
11 to accept this in evidence, as I stated, for the reader of  
12 the record to give it the appropriate weight. Go ahead.

13 **(Employer's Exhibit 1 received in evidence.)**

14 Q. BY MR. LAC: And can -- at Sunset Station, have you ever  
15 encountered an issue with a guest claiming any issues with  
16 the printer on the slot machine?

17 MR. TOMBERLIN: I'm going to object again to the leading  
18 nature of these questions.

19 HEARING OFFICER McGUIRE: Yes, please. Restate your  
20 question, please.

21 Q. BY MR. LAC: In your experience as slot director at  
22 Sunset Station, have guests made any other complaints about  
23 the machines' functionality?

24 A. Yes. There have been issues where they feel that the  
25 printers haven't functioned correctly, that it is printing

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1 the wrong amounts or that a ticket didn't print at all.

2 Q. When you say ticket, what do you mean by that?

3 A. As the slot machine, when you put money into the slot  
4 machine, it doesn't issue money back out. When you cash out,  
5 it actually issues a ticket that has a value attached to it.

6 Q. And to be clear for the record, at Sunset Station you  
7 have encountered that issued?

8 A. Yes.

9 Q. Let's turn to slot machines generally. Have you  
10 encountered any cheating with respect to slot machines with  
11 jackpot payouts?

12 MR. TOMBERLIN: This is, this is the same leading  
13 questions where he's telling him where to go, and it's  
14 completely inappropriate.

15 HEARING OFFICER MCGUIRE: Yes. Please restate your  
16 question.

17 **(Employer's Exhibit 2 marked for identification.)**

18 Q. BY MR. LAC: Okay. You know what, let me -- let me get  
19 to Employer's -- I'd like to show you a document then,  
20 Employer's Exhibit 2. I'm sorry, there's two pages.

21 A. Two pages, yep.

22 HEARING OFFICER MCGUIRE: I did get two pages.

23 MR. LAC: I need to hand you this page.

24 MR. TOMBERLIN: It's two pages?

25 MR. LAC: It's two pages, yeah.

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1 A. Yes.

2 Q. Okay. And you saw it whenever you were at Sunset  
3 Station?

4 A. I did.

5 Q. Were there other guidelines outside of this related to  
6 slot technician policy and procedures?

7 A. No, that's it.

8 HEARING OFFICER McGUIRE: Okay, Mr. Tomberlin? You okay  
9 with that?

10 MR. TOMBERLIN: Yeah, I think so.

11 HEARING OFFICER McGUIRE: Okay, I will accept it in  
12 evidence. Received in evidence.

13 **(Employer's Exhibit 2 received in evidence.)**

14 MR. LAC: So that was the slot manual is Employer's  
15 Exhibit 2?

16 HEARING OFFICER McGUIRE: Yes.

17 MR. LAC: Okay, thank you.

18 **DIRECT EXAMINATION (cont.)**

19 Q. BY MR. LAC: Mr. McGuire, can you turn -- well, can you  
20 look at page 131 of the slot Policy & Procedure Manual?

21 A. Got it.

22 Q. Can you tell me what this policy is about?

23 A. So basically when a guest hits a jackpot, depending on  
24 the dollar amount of the jackpot, there are different  
25 signature levels, different duties that need to be done. For

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1 instance, if a jackpot, if you look at the very bottom, is  
2 over \$100,000, it lists all the signatures that are required  
3 and verifiers that are required for that jackpot. As well as  
4 number 7, the slot technician game chip verification, which  
5 is what we call a Kobetron machine, where they take the chip  
6 or the program and verify that it is accurate for that game.

7 Q. When you say -- let's back it up. So what happens if  
8 there is a slot -- a jackpot of \$100,000?

9 A. There is a lot of verifiers needed according to the list  
10 here, including the GSA, a cashier, slot lead, shift manager,  
11 casino shift manager, and also a slot tech to verify it.

12 Q. And the slot technician's role in verifying jackpots,  
13 could you please describe in detail how that happens?

14 A. Yeah. They take the program from the game and verify  
15 with the Kobetron machine that verifies the signature of that  
16 program to make sure it is accurate.

17 Q. Can you spell out the Kobetron, what -- provide the  
18 spelling?

19 A. K-o-b-e-t-r-o-n.

20 Q. And the slot technicians carry a Kobetron device?

21 A. No, there is one Kobetron device for the department, and  
22 it's stored in the tech manager's office.

23 Q. Okay. And why is it that -- why is it that this policy  
24 is in place?

25 A. Just to make sure that there's no malfunction on the



1 program.

2 Q. What would be the -- what's the consequence of failure  
3 to verify a jackpot?

4 A. If the program had been tampered with or is invalidated  
5 or revoked, it could cost the Company money.

6 Q. At Sunset Station, what would be the consequence to a  
7 slot technician if they failed to properly verify a jackpot?

8 A. They could be disciplined.

9 Q. I'm going to show you another document. I'll give you  
10 time to look it over.

11 **(Employer's Exhibit 3 marked for identification.)**

12 HEARING OFFICER McGUIRE: Are you offering this in  
13 evidence?

14 MR. LAC: Yes. We'd like to move to admit it into  
15 evidence as Employer's Exhibit Number 3.

16 MR. TOMBERLIN: What is IGT?

17 THE WITNESS: International Gaming Technologies. It's  
18 the largest slot machine manufacturer.

19 HEARING OFFICER McGUIRE: Any objection to receiving  
20 this in evidence?

21 MR. TOMBERLIN: I mean I don't at this time. I'm not  
22 sure what purpose it's going to be asked to be admitted for,  
23 so I'll reserve.

24 HEARING OFFICER McGUIRE: Okay.

25 Q. BY MR. LAC: Mr. McGuire, could you, could you describe

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1 what this document says?

2 A. Yeah, this a mandatory notice, what we call a customer  
3 notification, a CN. Basically, when the manufacturer  
4 discovers issues or problems with a slot machine, they'll  
5 issue this with instructions on how to repair or fix the  
6 issue.

7 Q. Okay. What does the -- what do you do -- as slot  
8 director at Sunset Station, what would you do when you  
9 receive one of these notices?

10 A. So when I receive these, I would make sure that the  
11 technicians, including the slot techs, the tech manager, are  
12 aware of the notice and comply with what the instructions are  
13 in the notice.

14 Q. What's the -- do the slot technicians also receive this  
15 notice?

16 A. Yes, they do.

17 Q. Do they get it directly from IGT or --

18 A. Yeah. Basically, IGT has e-group emails, and they email  
19 these out to whoever is signed up for it. And the slot techs  
20 are signed up for them too.

21 Q. Are slot techs required to be signed up?

22 A. Not required.

23 Q. At your time at Sunset Station, were all the slot techs  
24 signed up for these notices?

25 A. To my knowledge, yes.

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1 MR. LAC: Okay.

2 Q. BY MR. LAC: And this particular notice, could you,  
3 could you describe what the -- do you see the portion here  
4 where it describes a symptom?

5 A. Yeah.

6 Q. Could you describe what the -- what this, what this  
7 notice is essentially saying in that portion?

8 A. Looks to me like affect the program's up-play feature,  
9 like they were getting incorrect -- what they were betting is  
10 an incorrect amount. It looks like they could get incorrect  
11 payouts with this program.

12 Q. So there was a malfunction in the program somehow?

13 A. Yeah, in the program itself.

14 Q. And how many, how many notices would you receive about  
15 similar to this?

16 A. Well, there's several different manufacturers. We'd  
17 receive several a month, three or four a month.

18 Q. Is there, is there any significance to the title of the  
19 document as a mandatory notice?

20 A. Yeah. Basically, whenever they send out a mandatory  
21 notice, it means it's mandatory to address the issue. And in  
22 this case, replacement programs had to -- the programs that  
23 had to be replaced.

24 Q. Why is it, why is it -- is there a non-mandatory type of  
25 notice?

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1 A. Some of them are advisories that would just say, hey,  
2 there's some issues here, but it doesn't really affect the  
3 payout of the game; you can choose to address them or not.

4 Q. So a mandatory notice is a --

5 A. Yeah, you must replace.

6 Q. -- something you need to take action on?

7 A. Yes, correct.

8 HEARING OFFICER MCGUIRE: When this mandatory notice  
9 came out, you said it's that the program must be replaced?

10 THE WITNESS: Correct.

11 HEARING OFFICER MCGUIRE: So would they send out the new  
12 program?

13 THE WITNESS: They would.

14 HEARING OFFICER MCGUIRE: Immediately or with the  
15 notice?

16 THE WITNESS: So what would happen is the slot tech  
17 would take a count of how many of these programs are active  
18 on the floor and communicate with IGT and ask for the  
19 replacement software according to how many we need.

20 HEARING OFFICER MCGUIRE: When you received this and  
21 found that it was -- there was a problem, would you shut down  
22 the machine?

23 THE WITNESS: Only if it tells you to, the games must be  
24 shut down. So in this case, I don't think we did.

25 HEARING OFFICER MCGUIRE: Mr. Lac?

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1 HEARING OFFICER MCGUIRE: Please do so.

2 Q. BY MR. LAC: Mr. McGuire, as slot director at Sunset  
3 Station, did you oversee -- did you ever oversee the  
4 installation of new slot machines?

5 A. In a general sense, yes.

6 Q. What are the slot duties -- slot tech's duties with  
7 respect to new slot machines?

8 A. So their duty would be to move the machines to the  
9 location that they are going to be installed at, to put them  
10 in the location, to hook them up, to program, to make sure  
11 that the settings that are appropriately set according to our  
12 format, and to make sure that that way the payouts are  
13 correct and everything functions the way it's supposed to.

14 Q. When you say setting the format to make sure the payouts  
15 are correct, what do you mean by that?

16 A. Well, there are certain things that can be set. For  
17 instance, you've got to make sure that the denoms are set  
18 correctly so that when you put a \$1 bill in, that it gives  
19 you \$1 in credits. If you set that incorrectly -- you can  
20 set it to put a \$1 bill in, and it can give you \$100 in  
21 credits. So you've got to make sure those are set up.  
22 You've got to make sure that the return percentage is set up  
23 correctly. If you want to set that game to be a 90 percent  
24 return game, that that's what they set it at, the 90 percent  
25 return game.

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1 Q. What would be the consequence of a slot technician  
2 failing to correctly set?

3 A. If those settings are set wrong, it could be a  
4 significant amount of money, a loss to the Company.

5 Q. Have you -- at Sunset Station have you ever encountered  
6 slot machines being set up incorrectly?

7 A. No.

8 Q. In any way?

9 A. No.

10 HEARING OFFICER MCGUIRE: Never?

11 THE WITNESS: No, not at -- not at Sunset.

12 Q. BY MR. LAC: Mr. McGuire, can I ask you some questions  
13 about loss reports. Are you familiar what those are?

14 MR. TOMBERLIN: This is again leading. Every time you  
15 start a new topic, you tell him what you want him to testify  
16 about, and that's completely inappropriate.

17 MR. LAC: I'm only asking as to the existence of loss  
18 reports, if he's ever --

19 HEARING OFFICER MCGUIRE: Just state a question without  
20 leading.

21 Q. BY MR. LAC: Mr. McGuire, did your -- as part of your  
22 duties as slot director, did you ever receive reports  
23 regarding losses suffered -- losses by machines, slot  
24 machines?

25 A. Yes.

1 Q. What did you do -- where does the information come from?

2 A. Basically, the system can track the daily win/loss of  
3 slot machines, and they -- corporate has a report that's  
4 issued out called the 4-day losing report that keeps track of  
5 any slot machines that has lost money 4 days in a row. And  
6 they are compiled by property and sent out to the properties.

7 Q. Why is it that the -- why is it that the casino keeps  
8 track of these?

9 A. Well, if there is some machine is set up incorrectly and  
10 somebody is taking advantage of the machine, we can see if a  
11 game is losing money 4 days in a row. And we can go  
12 investigate and make sure the machine is set up correctly.

13 Q. When you say -- what is the slot technician's role upon  
14 receiving one of these reports?

15 A. So daily a tech would take that report and go out to the  
16 floor and verify game by game that they are set up correctly  
17 and that they are functioning correctly.

18 Q. Who actually receives these loss reports? Which hourly  
19 employees are --

20 A. Slot techs will receive it, yes.

21 HEARING OFFICER MCGUIRE: Do they receive it directly  
22 from -- well, where are they coming from?

23 THE WITNESS: They come from corporate, but they are  
24 auto-generated reports that come from the system. I'm not  
25 sure if they receive it directly or if it comes through their

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1 MR. TOMBERLIN: No.

2 HEARING OFFICER MCGUIRE: Employer Exhibit 4 is  
3 received.

4 **(Employer's Exhibit 4 received in evidence.)**

5 Q. BY MR. LAC: I think you stated earlier, but again,  
6 which employees actually receive this report?

7 A. So looking at the second page, the -- it looks like tech  
8 managers and slot directors and operations managers are the  
9 ones that actually receive this report.

10 Q. Do slot technicians receive this report?

11 A. Not directly. They would receive it either from myself  
12 or from the tech manager.

13 Q. And upon receiving this report, what would, what would a  
14 slot technician do?

15 A. Whoever is on duty at the time would investigate game by  
16 game, go to each one of these games and makes sure that  
17 they're functioning the way they're supposed to be  
18 functioning. They're taking bills, printing tickets,  
19 crediting the right amount of credits, everything to make  
20 sure the machine is functioning correctly.

21 Q. How frequently are these reports generated?

22 A. Daily.

23 Q. Daily. So this -- now is there a -- one more question  
24 on this one. Do GSAs get this account, the guest service  
25 ambassadors?

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1 A. No. No, they do not.

2 Q. Why is that?

3 A. They wouldn't have the access to the information to  
4 verify that they are set up correctly, the setup sheets that  
5 they're supposed to be set up as. That's not their job  
6 function. The GSAs pay the jackpots, do change, help the  
7 guests out, where the slot technicians are the ones that are  
8 verifying the setups of the games in order to protect the  
9 Company.

10 HEARING OFFICER McGUIRE: So guest service ambassadors  
11 are what we used to call the change people --

12 THE WITNESS: Yeah.

13 HEARING OFFICER McGUIRE: -- that would go around and --

14 THE WITNESS: Yes. That also includes paying jackpots  
15 now too. Back 20 years ago --

16 HEARING OFFICER McGUIRE: They give change, yeah.

17 THE WITNESS: -- there were change people, and then  
18 there were people that paid jackpots. They've combined the  
19 roles into one now.

20 HEARING OFFICER McGUIRE: Is that all they do?

21 THE WITNESS: So they have a lot of functions. So they  
22 can make change, answer change lights, watch machines for  
23 guests. They can be the go-between between them and a  
24 cocktail waitress, or IM with internal maintenance for the  
25 cleanliness of the slot machine. Basically, they're an

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1 HEARING OFFICER MCGUIRE: Two, the slot manual.

2 MR. LAC: Um-hum.

3 HEARING OFFICER MCGUIRE: Sunset Station slot manual.

4 MR. LAC: Sunset Station slot manual.

5 HEARING OFFICER MCGUIRE: Just a moment.

6 **(Employer's Exhibit 5 marked for identification.)**

7 HEARING OFFICER MCGUIRE: Any objection?

8 MR. TOMBERLIN: I don't see the relevance in the fact  
9 that Nevada has state laws that apply to people. That's my  
10 only objection.

11 HEARING OFFICER MCGUIRE: Okay. I will accept this.  
12 And please state the questions, not leading questions.

13 MR. LAC: Okay.

14 **(Employer's Exhibit 5 received in evidence.)**

15 Q. BY MR. LAC: Mr. McGuire, can you explain what this  
16 policy is regarding?

17 A. Yeah, it's a --

18 MR. TOMBERLIN: Which page are we at?

19 MR. LAC: At 150 of the slot manual.

20 THE WITNESS: So this policy is just making sure that  
21 the team member is aware of the state law about sharing  
22 information with a guest regarding the specific slot machine  
23 performance.

24 Q. BY MR. LAC: And when you say information regarding a  
25 slot machine performance, would that include loss reports

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1 that we just looked at?

2 A. Yes.

3 Q. And so under this policy, what would the slot  
4 technician's obligation be with regard to --

5 A. Well, it would be against policy for them to share that  
6 information with any guest.

7 Q. And why is that?

8 A. Because then the guest would know insider information on  
9 the performance of a slot machine.

10 Q. And what would a guest do with that information?

11 A. They maybe --

12 MR. TOMBERLIN: Objection, calls for specification.

13 HEARING OFFICER McGUIRE: Yes. You can restate your  
14 question.

15 Q. BY MR. LAC: Would there be any consequences to the  
16 casino if such information was shared with a guest?

17 A. Well, the guest would then know if a game is continually  
18 losing money and maybe they would go play that game, which  
19 would cost the Company further more money.

20 Q. Okay. And can we -- let's talk about the slot machine,  
21 the slot machines generally. Have you ever encountered any  
22 like physical issues with the machines?

23 A. We have issues where a game, like if a power outage or a  
24 system outage where slot machines could black out, lose  
25 memory, malfunction, yes, we've had issues.

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1 MR. TOMBERLIN: Is this, is this things that have  
2 happened at Sunset Station?

3 THE WITNESS: Yes.

4 MR. LAC: Have any guests ever tried to physically --

5 MR. TOMBERLIN: Objection, leading.

6 HEARING OFFICER McGUIRE: Please state your question in  
7 relation to Sunset Station and without leading.

8 Q. BY MR. LAC: Okay. At Sunset Station, have any slot  
9 machines ever been -- okay, that's it. Do the slot machine  
10 have -- are they physically enclosed in some kind of --

11 A. So slot machines do have locked doors on them, so they  
12 are locked and secured, yes, at Sunset Station.

13 Q. Has there ever been an issue about regarding the locks  
14 on slot machines at Sunset Station?

15 A. So at Sunset Station, no. I've never seen any issues  
16 with them. There are specific locks and keys that are kept  
17 in a KeyWatcher machine that certain -- that restricts access  
18 to certain groups of people. For instance, the machine door  
19 keys would be -- you could, if you were a GSA, a supervisor,  
20 a shift manager, or slot tech, you would have access to  
21 machine door keys. But then there are other locks farther  
22 inside the machine, including CPU locks and cash can locks,  
23 that only certain groups of people would access.

24 Q. With respect to the CPU lock, who has access? Who has  
25 the key to that?

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1 A. That would be the slot tech side, so that would be the  
2 tech manager, tech supervisor, slot techs, and supervisors  
3 and shift managers would have access to that key.

4 Q. Do GSAs have access to those, too?

5 A. No, they do not.

6 Q. Why is that?

7 A. They don't -- that's not their job function.

8 Q. What other keys do slot techs have access to?

9 A. There are reset keys, diagnostic keys that they also  
10 have, cash can keys.

11 Q. What's a -- what's a cash can key?

12 A. That's where after a bill or a ticket is validated, it  
13 gets deposited into a can that's inside the slot machine and  
14 stored.

15 HEARING OFFICER McGUIRE: Tickets and --

16 THE WITNESS: And cash and currency.

17 HEARING OFFICER McGUIRE: -- cash go together?

18 THE WITNESS: Yes.

19 Q. BY MR. LAC: You mentioned a cash can in the machine.

20 How much money is generally kept in that cash can?

21 A. Well, it depends on the denominations of the bills and  
22 tickets, but most cash cans will fit 600 notes inside of it.

23 Q. Okay.

24 MR. LAC: And I have finally -- that's the last one,  
25 right? Okay. I have one more exhibit that we want to admit

1 to the record. This is a part of Exhibit 2, the Sunset  
2 Station Slot Department Policy & Procedure Manual, page 125.

3 MR. TOMBERLIN: I would ask for time to review it.

4 HEARING OFFICER McGUIRE: Yes.

5 MR. TOMBERLIN: I'm ready.

6 HEARING OFFICER McGUIRE: You may continue, Mr. Lac.

7 **(Employer's Exhibit 6 marked for identification.)**

8 Q. BY MR. LAC: Mr. McGuire, are you -- do you recognize  
9 this document here?

10 A. I do.

11 Q. What is this?

12 A. It's a Key Issuance and Control policy.

13 Q. This is part of the slot department manual?

14 A. It is, correct.

15 Q. At Sunset Station?

16 A. Yes.

17 Q. When you were slot director, you were familiar with this  
18 policy?

19 A. I was.

20 Q. This slot policy?

21 A. Yes.

22 Q. What does this policy generally describe with respect to  
23 team members' responsibilities as to keys?

24 A. That's exactly what it describes. It basically  
25 describes the policy with regards to who is responsible for

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1 keys after they are checked out and making sure they're  
2 returned at the end of their shift and whatever the  
3 discipline would be if that fails to happen.

4 Q. What kind of, what kind of situations would warrant  
5 discipline?

6 A. If somebody loses their keys or loses a key off of their  
7 key ring that's a secure key, like a slot machine door key,  
8 it describes the discipline involved if that gets lost.

9 Q. And what's the consequence to Sunset Station if a key is  
10 lost?

11 A. If a key is lost, then it could then be counterfeited or  
12 copied, and it could be significant loss to the Company.  
13 Even if they caught it quick enough and then rekeyed the  
14 entire casino floor, that's in the tens of thousands of  
15 dollars cost.

16 Q. What would be the consequence to the slot technician who  
17 lost his or her key?

18 A. They could be terminated.

19 MR. LAC: All right, that's it. That's it for this one,  
20 this exhibit. I'd like to move it into the record as  
21 Employer's Exhibit Number 6.

22 HEARING OFFICER McGUIRE: Six. Any objection?

23 MR. TOMBERLIN: No. I would just note that that is  
24 page 125, and it's part of the broader Policy & Procedure  
25 Manual.

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1 call upon the slot techs to verify.

2 Q. Okay. Does Sunset Station have any rules or policies  
3 against underage gaming?

4 A. Yes, they do.

5 Q. What's the policy?

6 A. The policy is that all team members are to be actively  
7 looking for anyone that's underage and acting unlawfully.

8 HEARING OFFICER McGUIRE: Excuse me. You said all team  
9 members?

10 THE WITNESS: All team members.

11 HEARING OFFICER McGUIRE: All supervisors?

12 THE WITNESS: Everybody.

13 HEARING OFFICER McGUIRE: Everybody?

14 THE WITNESS: Correct.

15 HEARING OFFICER McGUIRE: In every department?

16 THE WITNESS: In every department. But it affects  
17 mostly people that are actually on the casino floor. So if  
18 you don't work on the casino floor, then you wouldn't have,  
19 you know --

20 HEARING OFFICER McGUIRE: So the guests in attendance --

21 THE WITNESS: Right.

22 HEARING OFFICER McGUIRE: -- are not required to do  
23 that?

24 THE WITNESS: No, no.

25 HEARING OFFICER McGUIRE: So it's only the employees who

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1 work on the --

2 THE WITNESS: It's employees that work on the casino  
3 floor, yes.

4 HEARING OFFICER McGUIRE: Okay.

5 THE WITNESS: That's part of their daily job.

6 Q. BY MR. LAC: And the slot techs, do they have  
7 responsibilities with respect to --

8 A. They would be included in that, yes.

9 Q. What would that -- what would generally their  
10 responsibilities be?

11 A. Well, as slot techs work mostly on the casino floor in  
12 the slot machines, they are directly right there in the thick  
13 of the -- thick of things you'd say. And they are like  
14 inches, feet away from everyone that's gambling, so they have  
15 a need to have a heightened awareness and be watching for  
16 that.

17 HEARING OFFICER McGUIRE: Okay. Let me ask you first  
18 back to all employees on the casino floor, can you name some  
19 of the other employees who are --

20 THE WITNESS: Yeah, let's see here.

21 HEARING OFFICER McGUIRE: Who have the same  
22 responsibility to do that?

23 THE WITNESS: Yeah.

24 HEARING OFFICER McGUIRE: Cocktail waitresses?

25 THE WITNESS: Cocktail waitresses, yep. Internal

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1 maintenance that are maintaining the slot machines, cleaning  
2 the slot machines. I think security obviously.

3 HEARING OFFICER McGUIRE: How about dealers?

4 THE WITNESS: Dealers are not in a position really to  
5 watch the casino floor because they're focused on their  
6 tables so -- I can't think of any others right now.  
7 Supervisors, shift managers obviously. Anyone that's on the  
8 executive team, when they're walking the floor.

9 MR. TOMBERLIN: What about the security department?

10 THE WITNESS: Yes.

11 HEARING OFFICER McGUIRE: Are all employees taught or  
12 instructed what to do if they suspect --

13 THE WITNESS: Yeah.

14 HEARING OFFICER McGUIRE: -- underage gambling?

15 THE WITNESS: Yeah. They're told that if they feel that  
16 they see somebody that may be underage, they're to contact  
17 either security or somebody on the slot team to approach the  
18 person and validate ID.

19 HEARING OFFICER McGUIRE: Okay. Who is it would be on  
20 the slot team?

21 THE WITNESS: It could be a supervisor would be --  
22 probably would be the first contact would be a supervisor or  
23 shift manager.

24 HEARING OFFICER McGUIRE: I want to know who is it, when  
25 you say slot team --

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1 THE WITNESS: Yeah, yeah.

2 HEARING OFFICER McGUIRE: -- what employees are on the  
3 slot team?

4 THE WITNESS: So that would be slot techs, slot GSAs,  
5 slot utility techs, I said GSAs, guest service supervisor,  
6 shift managers, and myself. I've had at Sunset people  
7 approach me and tell me I think that they may be underage.

8 HEARING OFFICER McGUIRE: Thank you.

9 THE WITNESS: Yes.

10 Q. BY MR. LAC: What's the significance of the Company's  
11 rule against underage gambling?

12 A. Well, obviously it's against the law, and it could have  
13 financial impact and even cost a casino the gaming license if  
14 they allow, if they allow underage gaming.

15 Q. Okay. Does Sunset Station also have rules and policies  
16 against underage drinking?

17 A. Yeah, similar to underage gambling, same policy.

18 Q. What are a slot technician's responsibilities regarding  
19 that?

20 A. Again, if they, if they're on the floor, amongst the  
21 slot machines, if they see somebody that is drinking and they  
22 feel they may be underage, same responsibility. They can,  
23 they can approach the guest and card them. And if they're  
24 not comfortable with that, they can have a supervisor do it.

25 HEARING OFFICER McGUIRE: They can approach the guest?

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1 THE WITNESS: Sure.

2 HEARING OFFICER McGUIRE: And card them.

3 THE WITNESS: They can.

4 HEARING OFFICER McGUIRE: They can directly --

5 THE WITNESS: I don't know that it regularly happens,  
6 but they can.

7 HEARING OFFICER McGUIRE: The slot technicians can card  
8 the guest?

9 THE WITNESS: Yes.

10 HEARING OFFICER McGUIRE: Can GSAs do --

11 THE WITNESS: Yes, they can too.

12 HEARING OFFICER McGUIRE: Can anyone on the slot team  
13 card the guest?

14 THE WITNESS: Yes, correct.

15 HEARING OFFICER McGUIRE: Okay.

16 Q. BY MR. LAC: Are slot technicians, do they receive any  
17 information on individuals who are not permitted on the  
18 premises?

19 A. Yeah. We have a banned patron list that is available  
20 for all team members that's kept in locations around the  
21 casino.

22 Q. Why would, why would you provide that to a slot  
23 technician?

24 A. Because they --

25 HEARING OFFICER McGUIRE: State a question because

1 it's --

2 Q. BY MR. LAC: Okay. Why are slot technicians provided  
3 with that banned patron list?

4 A. All team members must be provided with the -- or know  
5 where it's at, have access to the banned patron list,  
6 including slot techs.

7 Q. Okay. And does Sunset Station have a policy regarding  
8 gambling by team members?

9 A. We do.

10 Q. What does that policy say?

11 A. The policy just breaks down by position who is allowed  
12 and who is not allowed to gamble.

13 Q. Are slot technicians allowed to gamble on Sunset  
14 Station?

15 A. No, they're not allowed to gamble at Sunset Station.

16 Q. What about other -- at other Station Casino properties?

17 MR. TOMBERLIN: Objection.

18 HEARING OFFICER McGUIRE: Let's just confine it to  
19 Sunset Station.

20 Q. BY MR. LAC: And why -- what is the purpose behind that  
21 rule?

22 A. Well, the biggest purpose is just the security of the  
23 slot machines because they have access to machine data,  
24 machine setups, and it's just safer to keep everyone safe and  
25 keep the Company secure, financially secure, and for them not

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1 to have access and not to game.

2 HEARING OFFICER McGUIRE: Okay. I'm going to ask a few  
3 questions on this.

4 THE WITNESS: Sure.

5 HEARING OFFICER McGUIRE: So are there any -- you  
6 mentioned that there were other classifications who are  
7 prohibited from gambling.

8 THE WITNESS: Yes.

9 HEARING OFFICER McGUIRE: Can you tell me what those  
10 classifications are?

11 THE WITNESS: Off the top of my head --

12 HEARING OFFICER McGUIRE: At Sunset Station.

13 THE WITNESS: Yeah, at Sunset Station. Anyone that's in  
14 a key, they call key position, which would be executive team  
15 and above, are not allowed to game. Slot techs, tech  
16 manager, TPS are not allowed to game.

17 HEARING OFFICER McGUIRE: What's TPS?

18 THE WITNESS: Tech project supervisor. That's the tech  
19 supervisor.

20 HEARING OFFICER McGUIRE: Okay. And is that -- are they  
21 only prohibited from gambling at Sunset Station?

22 THE WITNESS: No, from any Station casino.

23 HEARING OFFICER McGUIRE: Any Station casino.

24 THE WITNESS: Correct.

25 HEARING OFFICER McGUIRE: Okay, I'm going to hold up.

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1 Go ahead.

2 Q. BY MR. LAC: Are there any other employees who are --  
3 hourly employees who are permitted to gamble?

4 A. Yeah, most -- in fact other than slot techs, I think  
5 they are all allowed, hourly employees are allowed to gamble.  
6 It just has to be 30 minutes before or after their shift and  
7 out of uniform.

8 Q. And what are some of those?

9 A. GRAs, guest room attendants; cage cashiers; GSAs.  
10 They're all allowed to gamble.

11 Q. What about table game stewards, are they allowed to  
12 gamble?

13 A. Yes.

14 HEARING OFFICER McGUIRE: Are security officers allowed  
15 to gamble?

16 THE WITNESS: Oh, that's a good question. I am not  
17 sure.

18 Q. BY MR. LAC: Is there a reason why the, why the  
19 difference in the policy with respect to slot technicians  
20 then?

21 A. Yeah, like I said -- stated before, they have  
22 information on the way the games and have access to change  
23 the way the games are setup, or have access to performance of  
24 slot machines.

25 Q. What would be the consequence to the Company if slot

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1 technicians were allowed to gamble?

2 A. It just opens you up to the ability for someone to set  
3 up a game to have it -- set up a game to pay out more than  
4 it's supposed to or to change the settings so there would be  
5 a financial consequence to the Company.

6 MR. LAC: Okay. I don't have any questions about this  
7 exhibit, but I'd like to admit it.

8 HEARING OFFICER McGUIRE: Before you do, let me just go  
9 back while we're close here to the underage drinking.

10 THE WITNESS: Okay.

11 HEARING OFFICER McGUIRE: You said it was anyone who  
12 worked on the slot floor.

13 THE WITNESS: Yeah, anyone that's on the floor, yes.

14 HEARING OFFICER McGUIRE: On the floor. So that's --  
15 would that be all the supervisors?

16 THE WITNESS: Yes.

17 HEARING OFFICER McGUIRE: Slot techs.

18 THE WITNESS: It would be slot supervisors.

19 HEARING OFFICER McGUIRE: GSAs.

20 THE WITNESS: GSAs, yep.

21 HEARING OFFICER McGUIRE: Cocktail waitresses?

22 THE WITNESS: Cocktail waitresses, bartenders, barbacks,  
23 security.

24 HEARING OFFICER McGUIRE: Security, okay. And who of  
25 those, or which of those classifications has the authority to

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1 time as slot director at Sunset Station?

2 A. Yes.

3 Q. Is it -- is the job description similar to the slot  
4 technician currently -- currently applicable to slot  
5 technicians at your current employer?

6 A. Yes.

7 Q. Current place of employment?

8 A. Yes.

9 HEARING OFFICER McGUIRE: Can you say that again,  
10 please.

11 Q. BY MR. LAC: Is the job description for the slot  
12 technician here the same as the job description applicable to  
13 the slot technicians at your current property?

14 A. Yes.

15 HEARING OFFICER McGUIRE: And that current property  
16 again?

17 THE WITNESS: Santa Fe.

18 HEARING OFFICER McGUIRE: Thank you.

19 Q. BY MR. LAC: Do you know if Station Casinos -- do you  
20 know if the job description has changed at all --

21 A. No.

22 Q. -- in the time you've worked at Station?

23 A. No. This has been the same. This was updated June  
24 2008. It's been the same job description up until current.

25 Q. Okay. And can you turn your attention to Employer's

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1 Exhibit Number 8, the job description for utility  
2 technicians.

3 A. Yes.

4 Q. Is this a true and correct copy of that, of the utility  
5 technician job description over at Sunset Station during your  
6 time as slot director?

7 A. Yes.

8 Q. What about at your current place of employment?

9 A. Yes, at Santa Fe as well.

10 HEARING OFFICER McGUIRE: And that's Santa Fe Station?

11 THE WITNESS: Correct.

12 MR. LAC: Okay. No other questions on this. I would  
13 like to admit it to the record, evidence into the record.

14 HEARING OFFICER McGUIRE: Any objection other than  
15 previously stated?

16 MR. TOMBERLIN: None.

17 HEARING OFFICER McGUIRE: Okay. Exhibits -- Employer  
18 Exhibit 7 and 8 are received.

19 **(Employer's Exhibits 7 and 8 received in evidence.)**

20 MR. LAC: That's all the questioning we had.

21 HEARING OFFICER McGUIRE: Okay.

22 MR. TOMBERLIN: Can we have a brief recess?

23 HEARING OFFICER McGUIRE: Yes.

24 **We're going to go off the record.**

25 **(Off the record from 12:00 p.m. to 12:15 p.m.)**

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1 A. No.

2 Q. No, you never did?

3 A. No, I did not experience any security issues.

4 Q. I'm going to refer to page 9 of Employer's Exhibit 2.

5 A. Okay.

6 Q. And that is the slot department organizational chart.

7 A. Okay.

8 Q. Do you recognize this?

9 A. I do.

10 Q. And you're at the top of it?

11 A. I am.

12 Q. All right. We're here today. We're talking about  
13 utility technicians and slot technicians, correct?

14 A. Correct.

15 Q. And they are supervised by a tech project supervisor.

16 A. Yes.

17 Q. Okay. Who on this list is on that policy that makes  
18 them unable to gamble in any Palace property?

19 A. Who is on this list that cannot gamble at any Palace?  
20 It would be on the tech side. From me down on the tech side  
21 cannot gamble at any Stations property.

22 Q. Slot operations manager can?

23 A. That's, yeah, that's on the operations side. They can.

24 Q. That individual would be able to?

25 A. Yes, as far as I can recall, yes.

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# Exhibit D

**Battista, Mike**

**From:** Ysita, Jorge  
**Sent:** Monday, July 02, 2018 12:20 PM  
**To:** Group - Sunset - Slot Techs  
**Cc:** Clark, Keith  
**Subject:** Previous Day BV Rejects 7-1-18

MFR	Cabinet Type	Denom	Machine	Location	Rejects	Accept Percent	Comments
IGT	IGT 19" SLANT	0.01	101565	060604	11	54%	
IGT	IGT 19" SLANT	0.05	207795	087603	8	73%	
ARISTOCRAT	ATI ARC	0.01	109325	023106	7	84%	
WILLIAMS	WMS BLADE UR	0.01	109911	030401	7	68%	
ARISTOCRAT	ATI CROWN SLANT	0.01	109609	041606	6	85%	
ARISTOCRAT	ATI VIRIDIAN WS UR	0.01	109516	052402	6	82%	
BALLY	BLY S-6000	1	402582	035605	6	63%	
IGT	IGT 13" BAR TOP	0.05	207964	040016	6	60%	
IGT	IGT 17" SLANT	0.01	107570	048808	6	81%	
IGT	IGT 19" SLANT	0.01	207580	087802	6	83%	

Jorge Ysita | Slot Shift Manager  
Sunset Station Hotel | Casino  
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[Jorge.Ysita@stationcasinos.com](mailto:Jorge.Ysita@stationcasinos.com)

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**Battista, Mike**

**From:** Reyes, Recardo  
**Sent:** Monday, July 02, 2018 3:12 PM  
**To:** Group - Sunset - Slot Techs  
**Subject:** BV list 7/2/18

MFR	Cabinet Type	Denom	Machine	Location	Rejects	Accept Percent	Comments
IGT	IGT 19" SLANT	0.01	101565	060604	11	54%	Bill and ticket tested good
IGT	IGT 19" SLANT	0.05	207795	087603	8	73%	Bill and ticket tested good
ARISTOCRAT	ATI ARC	0.01	109325	023106	7	84%	Bill and ticket tested good
WILLIAMS	WMS BLADE UR	0.01	109911	030401	7	68%	Bill and ticket tested good
ARISTOCRAT	ATI CROWN SLANT	0.01	109609	041606	6	85%	Bill and ticket tested good
ARISTOCRAT	ATI VIRIDIAN WS UR	0.01	109516	052402	6	82%	Bill and ticket tested good
BALLY	BLY S-6000	1	402582	035605	6	63%	In play
IGT	IGT 13" BAR TOP	0.05	207964	040016	6	60%	Bill and ticket tested good
IGT	IGT 17" SLANT	0.01	107570	048808	6	81%	Bill and ticket tested good
IGT	IGT 19" SLANT	0.01	207580	087802	6	83%	Bill and ticket tested good

Ricky Reyes- Slot Technician  
Sunset Station Hotel and Casino  
1301 West Sunset Road  
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Phone: (702)547-7777 Ext#7017  
E-mail: [Recardo.reyes@stationcasinos.com](mailto:Recardo.reyes@stationcasinos.com)

# Slot Department Policy 5.1

## Signatures

**Effective: December 11, 2006**

Effective at 12:01AM Thursday August 31<sup>st</sup> 2007 all Slot GSA's will now process all computerized taxable jackpots up to \$5,000.00. The GSA will be responsible for completing the W2-G form and will process the entire transaction at the JP workstation without a Lead or above having to swipe their card and enter a password. Our signature requirements will remain the same the only thing that is changing is the system authorization levels. This should speed up our computerized taxable JP turnaround time. A lead or above should be called to the game when the GSA starts to process the JP this way the lead is there ready to verify the transaction and sign the ticket. Please note that the lead or above will still be required to insert their witness card in the machine to complete the transaction and will still be responsible that the transaction paperwork including the W2-G is correctly filled out. Below are our current signature requirements for your reference.

### Required signatures for computerized Jackpots/CCO's:

<b>Ticket Amount:</b>	<b># of Signatures:</b>	<b>Signatures required:</b>
<b>\$1 – \$1,199.99</b>	<b>2</b>	<b>1. GSA Initiator, 2. GSA Cashier or Cage Cashier. (Sign as Cashier and Initiator when doing Pouch/Bank Pays).</b>
<b>\$1,200 - \$9,999.99</b>	<b>3</b>	<b>1. GSA Initiator, 2. GSA Cashier or Cage Cashier. (Sign as Cashier and Initiator when doing Pouch/Bank Pays). 3. Slot Lead or above</b>
<b>\$10,000 - \$49,999.99</b>	<b>4</b>	<b>1. GSA Initiator, 2. GSA Cashier or Cage Cashier. (Sign as Cashier and Initiator when doing Pouch/Bank Pays). 3. Second Verifier, 4. Slot Lead or above.</b>
<b>\$50,000 - \$99,999.99</b>	<b>5</b>	<b>1. GSA Initiator, 2. GSA Cashier or Cage Cashier. (Sign as Cashier and Initiator when doing Pouch/Bank Pays). 3. Second Verifier, 4. Slot Lead or above, 5. Casino Shift Manager or Above</b>
<b>\$100,000 and over</b>	<b>7</b>	<b>1. GSA Initiator, 2. GSA Cashier or Cage Cashier. (Sign as Cashier and Initiator when doing Bank Pays). 3. Second Verifier, 4. Slot Lead, 5. Shift Manager or above, 6. Casino Shift Manager or above, 7. Slot Technician after game chip verification. (Polaroid Picture – Property Option)</b>

### Required signatures for Manual Jackpots/CCO's:

Ticket Amount:	# of Signatures:	Signatures required:
Up to \$99.99	3	1. GSA Initiator, 2. GSA Cashier, Cage Cashier, or Initiator if using Pouch Pay, 3. Designated Verifier. Anyone with access to Manual Forms <u>cannot</u> be Designated Verifier.
\$100 – \$4,999.99	4	1. GSA Initiator, 2. GSA Cashier, Cage Cashier, or Initiator if using Pouch Pay, 3. Designated Verifier, 4. Slot Lead. Anyone with access to Manual Forms <u>cannot</u> be Designated Verifier.
\$5,000 - \$24,999.99	5	1. GSA Initiator, 2. GSA Cashier, Cage Cashier, or Initiator if using Bank Pay 3. Designated Verifier, 4. Slot Lead, 5. Shift Manager. Anyone with access to Manual Forms <u>cannot</u> be Designated Verifier.
\$25,000 - \$99,999.99	6	1. GSA Initiator, 2. GSA Cashier, Cage Cashier, or Initiator if using Bank Pay 3. Designated Verifier, 4. Slot Lead, 5. Shift Manager, 6. Casino Shift Manager. (Polaroid Picture – Property Option)
\$100,000 and over	7	1. GSA Initiator, 2. GSA Cashier or Cage Cashier, 3. Designated Verifier, 4. Slot Lead or above, 5. Shift Manager or above, 6. Casino Shift Manager or above, 7. Slot Technician after Kobetron verification. (Polaroid Picture – Property Option)



# Witness Requirements

Internal Controls and Gaming Regulation Standards flag the following situations in the system as violation of witness card requirements. Witness card violations include:

- Failure to have a witness at a jackpot
- Failure to have your witness insert their card on taxable jackpots
- Completing a fill without having a witness present.

We simply have to be able to prove that there were two people at the machine at the time of the transaction so on all of the transactions described above, it is the witness's responsibility to make sure that he/she inserts the Acres card regardless of whether or not the machine prompts you for a witness card.

## **The process for reviewing the "witness card violation" reports will be as follows:**

Daily a report is reviewed to verify compliance with the above gaming regulations. If you make a mistake, you must do the following to rectify the situation:

- Should you make a mistake with your witness card, you must insert your card in the game and it will show in the "machine events" that you did witness the transaction.

## **The following disciplinary action will be taken for witness card violations:**

- A "Note to File" will be issued to the transaction witness for the violation.
- The Team Member will sign the note to file as acknowledgement that they have been warned.
- Every three (3) "Note to files" in a rolling 90-day period will result in one progressive discipline step for Job Performance.
- Note: There must be a witness signature on the ticket in accounting or the initiator will automatically progress one discipline level in the job performance category in accordance with the Signatory requirements mentioned above in this policy.

## **SIGNATORY STANDARDS**

1. It is essential that all Team Members understand that they must not sign a document unless they have personally witnessed the transaction.
2. A Shift Manger and Lead must sign a Jackpot/CCO ticket generated as an override. The Shift Manager and Lead must be notified for approval and verification prior to completing the transaction.
3. A VOID transaction must be signed by a Lead and Service Ambassador. Both Team Members must sign the original ticket as well as the voided ticket.
4. Surveillance must be notified on all Jackpots \$10,000 and over.



CN: 5071 Rev: B\_M

# MANDATORY NOTICE

## MANDATORY SOFTWARE CUSTOMER NOTIFICATION

SUBJECT: ~~Ultimate X Poker Minimum Bet Configuration~~ DATE: 17 Jun 2014  
PRODUCT: AVP GAME TYPE: Ultimate X Poker

### SYMPTOM:

IGT has become aware of an issue with AVP Ultimate X Poker programs. The affected programs have a play feature which includes a bonus bet that is only available when playing the maximum hand bet. The appropriate value for the minimum bet setting, if enabled, is either a value less than or equal to the maximum hand bet or equal to the maximum game bet (maximum hand bet plus the bonus bet). When the minimum bet for a payable and denomination was set to a value between the maximum hand bet and the maximum game bet, the game pays may not have corresponded to the amount wagered.

### SOLUTION:

Until replacement programs are available, IGT suggests using one of the following workarounds:

- 1) If the minimum bet feature is not needed, disable the Minimum Bet by setting the minimum bet for each denomination to zero. Use eKey000005, or its upgrade, and touch Setup, Game, Theme Specific, Ultimate X Poker, and Minimum Bet. Select each denomination in the list in turn, and enter 0.00 for the desired minimum bet.
- 2) If the minimum bet feature is desired, enable the Minimum Bet by setting the minimum bet for each desired denomination to a value less than or equal to the maximum hand bet, or equal to the maximum game bet. Use eKey000005, or its upgrade, and touch Setup, Game, Theme Specific, Ultimate X Poker, and Minimum Bet. Select each denomination in the list in turn, and enter the desired valid minimum bet.

Denomination	Valid Settings for Enabled Minimum Bet		
	Triple-Play	Five-Play	Ten-Play
0.01	0.01 - 0.15, or 0.30	0.01 - 0.25, or 0.50	0.01 - 0.50, or 1.00
0.05	0.05 - 0.75, or 1.50	0.05 - 1.25, or 2.50	0.05 - 2.50, or 5.00
0.10	0.10 - 1.50, or 3.00	0.10 - 2.50, or 5.00	0.10 - 5.00, or 10.00
0.25	0.25 - 3.75, or 7.50	0.25 - 6.25, or 12.50	0.25 - 12.50, or 25.00
1.00	1.00 - 15.00, or 30.00	1.00 - 25.00, or 50.00	1.00 - 50.00, or 100.00
Any denomination D	D - 15×D, or 30×D	D - 25×D, or 50×D	D - 50×D, or 100×D

PROGRAM	AREA(S)
GAME014-001W81-D01	AZI, CAI, CO, FL, FLI, IA, IL, IN, KSI, KSL, LA, LAI, MD, MII, MS, NJ, NMI, NV, OH, OKI, WII
Installation Media: GI014-001W81-D001	
GAME014-001W81-D03	ARK, AZI, CAI, CO, CRUIS, CTI, DEL, FL, FLI, IA, IL, IN, KSI, KSL, LA, LAI, MD, MI, MII, MO, MS, NCI, NJ, NMI, NMT, NV, NYI, NYION, OH, OK, OKI, ONT, ORI, PEN, WII, WVL
Installation Media: GI014-001W81-D003	
GI014-001W81-D003V02	CAI, CTI, IA, IN, KSL, LA, LAI, MD, MI, MII, MO, MS, NJ, NMI, NV, NYI, OKI, ORI, PEN, WII
GAME014-001W81-D04	MNI
Installation Media: GI014-001W81-D004	
GAME014-001W81-D05	ECAPE, ESTAP, FREST, GAUT, KWAZ, LATAP, LIMPR, NCAPE, NWPRO, SAPI*, SLO, WCAPE
Installation Media: GI014-001W81-D005	
GI014-001W81-D005V02	ECAPE, ESTAP, FREST, GAUT, KWAZ, LATAP, LIMPR, NCAPE, NWPRO, SAPI*, WCAPE

\*SAPI represents the following areas: ALBAN, AO, ARM, ARUBI, AUS, BELI, BEN, BIH, BUENO, BURK, BURU, BWA, CAM, CAR, CHAD, CHILE, CM, COLOM, CONGO, CRI, CRUSI, CURI, DADI, DJIB, DOI, DRC, ECU, EGUIN, EGYPT, FIN, FR, GABO, GAMB, GH, GIB, GOA, GRMY, GT, GUIN, GUINB, HONDU, IC, ITALY, KAZ, KENYA, LAOS, LEB, MALI, MALTA, MAR, MCO, MG, MNTGR, MOL, MOZ, MSY, MUS, MW, NAM, NCYP, NIC, NIG, NOU, PARA, PL, PORT, ROM, SENE, SERB, SEYCH, STMRI, SURI, SWZ, TUN, TURK, TZA, UGA, UR, VENE, VNM, and ZMB.

#### REASON FOR CN REVISION:

**Revision B** – 18 Jun 2014: Revised to include Key Chip menu instructions and generic setting formulas.

# SUNSET STATION

6 Games Losing Four Consecutive Days

Mar 20, 2018

				Mar 20, 2018	Mar 19, 2018	Mar 18, 2018	Mar 17, 2018	4 Day Totals				TTM Data				30 Day					
Location	Type Desc	Den	Mfr	Coin In	Act Win	Coin In	Act Win	Coin In	Act Win	Coin In	Act Win	Ttl Coin In	Ttl Act Win	Act Hold%	Theo Hold%	TTM DOF	TTM CPD	TTM WPD	TTM Hold%	# Days Neg	Ttl Act Win
050702	GK MG MD.25-2 2L	0.25	IGT	\$2,792	(\$576)	\$4,921	(\$397)	\$5,766	(\$547)	\$6,433	(\$1,788)	\$19,912	(\$3,308)	-16.61%	4.94%	366	\$2,104	\$55	2.63%	8	\$6,460
062103	GK MG MD.05-1	0.05	IGT	\$908	(\$254)	\$1,785	(\$1,757)	\$684	(\$287)	\$3,998	(\$375)	\$7,376	(\$2,673)	-36.24%	6.46%	366	\$1,215	\$44	3.59%	10	(\$1,629)
051705	880C DANCING DRUMS 4L	0.01	BLY	\$1,875	(\$791)	\$1,426	(\$279)	\$4,254	(\$427)	\$5,673	(\$619)	\$13,228	(\$2,116)	-16.00%	9.02%	81	\$3,695	\$358	9.68%	11	\$10,182
022301	600C THE THIRD PRINCE RP	0.01	ATI	\$515	(\$1,349)	\$428	(\$105)	\$865	(\$71)	\$2,612	(\$85)	\$4,421	(\$1,610)	-36.42%	9.90%	366	\$1,229	\$131	10.67%	8	\$3,907
052802	250C GYPSY FIRE JPS 4L	0.01	KGI	\$156	(\$67)	\$850	(\$222)	\$1,470	(\$395)	\$2,560	(\$654)	\$5,037	(\$1,338)	-26.56%	10.54%	366	\$1,179	\$114	9.65%	10	\$1,236
024801	DW TRIP 4/8/10 MD.05-.25	0.05	IGT	\$3,659	(\$308)	\$1,962	(\$280)	\$1,767	(\$350)	\$3,362	(\$240)	\$10,750	(\$1,178)	-10.96%	2.10%	366	\$2,263	\$51	2.25%	10	\$861

Based on each machine's current TypeCd & MNum setup, regardless of position on floor  
Confidential & Proprietary. Property of Station Casinos.

ER 4

GCX8  
ER 4

## Marschke, Bryan

---

**From:** McGuire, Nick  
**Sent:** Thursday, March 22, 2018 9:12 AM  
**To:** Group - Sunset - Slot Techs  
**Subject:** FW: Games Losing 4 Consecutive Days  
**Attachments:** Games Losing Four Consecutive Days.pdf

---

**From:** [noreply@stncognosw2k8b.stationcasinos.com](mailto:noreply@stncognosw2k8b.stationcasinos.com)

**Sent:** Thursday, March 22, 2018 9:12:18 AM (UTC-08:00) Pacific Time (US & Canada)

**To:** Barile, Vincent; Mikulich, Thomas; Hoff, Theodore; Tyquiengco, Vince; Rawle, Dawn; Wade, Andre; Alvarez, Carlos; Brambley, Nelson; Smith, Lucas; Bashore, Glen; Chavarria, Alfonso; Schweigert, Steve; Stuhr, Greg; Reynolds, Ron; Jacek, Joseph; Oliver, Kevin; Pascua, Gilbert; Marschke, Bryan; Lee, Raymond; Farkes, Joe; Hilke, Brian; Lambert, Ron; Cruz, Dante; De Leon, Bernie; McDermott, Scott; Arena, Brent; Orosco, Albert; Joshua, Donald; Katz, Jordan; Cavallaro, Rick; Lau, Stephanie; McGuire, Nick; Sholing, James; Garni, Robert; McMillan, Eric; Pettersson, Roger; McNeill, Ernie III; Bruno, Tony

**Subject:** Games Losing 4 Consecutive Days

# **Slot Department Policy 19**

## **Machine Performance Information Sharing**

**Effective: February 2005**

---

**At no time is any team member allowed to pass on any information to a guest regarding a specific machines performance. Any information sharing to a guest of this type could be in violation of NGCB regulations and statues. Any Team Member doing this will be subject to immediate corrective counseling. Below are the statues regarding this issue:**

---

**NRS 465.070 Fraudulent acts. It is unlawful for any person:**

To place, increase or decrease a bet or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or which is the subject of the bet or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a bet or determining the course of play contingent upon that event or outcome.

NRS 465.075 Use of device for calculating probabilities. It is unlawful for any person at a licensed gaming establishment to use, or possess with the intent to use, any device to assist:

1. In projecting the outcome of the game;
2. In keeping track of the cards played;
3. In analyzing the probability of the occurrence of an event relating to the game; or
4. In analyzing the strategy for playing or betting to be used in the game, except as permitted by the Commission.

**Any request for machine information or performance by a guest must be referred to the Shift Manager.**

# Slot Department Policy 1

## Key Issuance and Control

### Effective: Revised August 2007

Every Team Member is responsible for the control of keys issued. The policy below outlines the procedures in regards to the issuance and control of all Slot Department keys.

1. Key issuance is controlled and monitored by the Key Watcher or the Slot Office. Keys will be issued and returned to the Key Watcher or the Slot Office. Loss of control of keys or taking keys off property is considered negligence, and will result in corrective counseling up to and including termination.
2. All keys issued must remain inside the hotel and casino. If the keys are taken outside of the building the Team Member may be subject to disciplinary action. If your keys are lost or you have taken them off property, immediately notify a Slot Lead or above. The Slot Lead or above will notify Surveillance, Security, and Senior Slot management.
3. If a Slot Department Team Member loses their entire key set or any of the secured door keys and they are not recovered within 4hrs of the end of their scheduled shift they will be subject to immediate suspension, which will lead to termination.
4. If a Slot Department Team Member fails to return their keys at the end of their shift and the keys are recovered on property intact, within 4hrs of the end of their scheduled shift, the next level of corrective counseling will be issued under the Job Performance Track.
  - If the keys are recovered on property intact after 4 hrs has passed, the Team Member will be issued a Suspension Pending Investigation, which may lead to termination.
  - For any Team Member to claim keys were recovered on property, there will need to be a witness (Security and/or Slot Management) to verify.
5. If a Slot Department Team Member fails to return their keys at the end of their shift and the keys have been taken off property the following will apply for each situation:
  - If the keys are not returned intact within 4 hrs of the end of the Team Members shift they will be subject to immediate suspension, which will lead to termination.
  - If the keys are returned intact, within 4 hrs of the end of the Team Members shift, they will be issued a last and final warning under the Job Performance Track
6. A Team Member will be subject to progressive disciplinary action for leaving a machine door or bank door unsecured.
7. If any keys are broken or do not work you must immediately notify a Slot Lead or above. The key will be checked and replaced. The broken key must be given to the Shift Manager on duty to inventory and replace.

If a key is broken on the floor both pieces of key must be turned in to your Slot Lead or above for proper destruction of broken keys. Should a key break off in a lock of a machine stay at the machine and notify a Slot Technician for assistance.

# **Exhibit E**



1 for with the accounting department and more or less an  
2 independent contractor and hired to do consulting work.

3 Q. Okay. And the Gaming Commission, is that the Nevada  
4 Gaming Control Board?

5 A. Yes.

6 Q. Sometimes also referred to as the NGCB?

7 A. Yes, it's a two-tiered system. We have the Nevada  
8 Gaming Commission and the Nevada Gaming Control Board.  
9 They're two separate entities.

10 Q. Okay. And is the Nevada Gaming Control Board, do they  
11 have the authority to make arrests?

12 A. They do.

13 Q. Is it considered a state law enforcement agency?

14 A. Yes, it is.

15 Q. Okay. And what positions did you hold at the Nevada  
16 Gaming Control Board?

17 A. I began with the board in February of 1995 as an  
18 enforcement agent, and I was assigned to the field services  
19 section, which responded to casino complaints, reports of  
20 individuals that were being detained by the casino subject  
21 to arrest, and subsequent to that, in 1996 I believe,  
22 sometime in the late summer, I was promoted to senior agent,  
23 and I was assigned to the special investigations section,  
24 which did confidential investigations on major issues  
25 involving licensees, specifically bookmakers and things such

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1 guest attendants there at that point, and if we would need  
2 any technical expertise, that's when we would summons the  
3 slot technician to respond.

4 Q. Okay. And you briefly alluded to it. So what, if any,  
5 role does the slot technician play in the process?

6 A. Well, they have a critical role in the process because  
7 they're the only ones with access, access to the device and  
8 the expertise in which to run the diagnostics of the  
9 machine. Game recall, we have button tests, reel step  
10 tests, reel strip tests, all of these different functions;  
11 plus they can look at all the accounting information such  
12 as, you know, how many bills were in the validator and which  
13 sequence they were entered, all kinds of different things  
14 that the machine can track.

15 Q. Okay. And in your experience, before the Gaming Control  
16 Board gets involved, has the casino itself typically  
17 conducted an internal investigation and reached a decision  
18 as to the dispute?

19 A. Yes. Once I arrived, one of my first duties, I guess,  
20 that I would use for myself is I would try to determine who  
21 the individual was that made the final binding, non-payment  
22 decision, speak to that individual because they then give me  
23 the Company's position on the individual's complaint. So  
24 then subsequent to that, then I would reverse -- kind of  
25 reverse-engineer everything they done up to that point to

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1 determine along the way if I agreed with all of the  
2 different findings they had made before my arrival.

3 Q. Okay. And in your experience, is that -- what, if any,  
4 does the slot technician have in that process?

5 MR. STERN: I'm going to object. That calls for  
6 speculation. It doesn't seek probative facts. It's unknown  
7 as to time. It's these sort of general questions. We don't  
8 know what employer he's referring to. It's just generalized  
9 testimony and has no probative value, and I object to it.

10 HEARING OFFICER KOPSTEIN: It's as to his experience, I  
11 think. I'll overrule the objection, and the testimony will  
12 be given the appropriate weight by the finder of fact.

13 Q. BY MR. HARLOW: You can answer.

14 A. Like I said, upon my arrival, if there was, you know,  
15 written voluntary statements taken, I would review those.  
16 But at the same time, I would also conduct a personal  
17 interview of the patron, any other witnesses, and of course,  
18 the slot technician themselves, to determine what, if  
19 anything, they had done, what, if any, determinations they  
20 had made, and then based on that information, I would move  
21 forward and complete the investigation and agree or disagree  
22 with their findings.

23 Q. Okay. And in your personal experience, what weight, if  
24 any, is given to the slot technician's conclusions or  
25 recommendations?

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1 MR. STERN: I'm going to object. It's vague. What  
2 weight is given by who?

3 HEARING OFFICER KOPSTEIN: If you could rephrase.

4 Q. BY MR. HARLOW: By the Nevada Gaming Control Board.

5 A. Me as the primary decision make, I give great deference  
6 to the information that they have provided.

7 Q. And when you interact with these slot techs at the  
8 property, do the slot techs act on their own accord, or are  
9 they directed what to do by the Gaming Control Board?

10 MR. STERN: Objection. Calls for speculation.

11 Q. BY MR. HARLOW: In your experience.

12 A. I do not know. It's taken outside my presence. I have  
13 no idea.

14 Q. No, I'm talking once you personally arrive on the scene.  
15 I'm sorry, not the preceding investigation. Does that --

16 MR. STERN: I'm sorry. I'm lost in the questions.

17 THE WITNESS: Me, too.

18 HEARING OFFICER KOPSTEIN: Can you repeat the question?

19 MR. HARLOW: Sure.

20 Q. BY MR. HARLOW: You testified that you personally would  
21 go out to these properties, these licensees to conduct the  
22 investigation. Is that right?

23 A. Yes.

24 Q. And that you would personally interview the slot  
25 technician?

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1 A. Correct.

2 Q. Did the slot technician walk you through the  
3 investigation of the machine?

4 A. Yes, they would.

5 Q. Okay. And would you give any directions to the slot  
6 technician?

7 A. At that particular point, I would ask them specific  
8 technical questions: Had they done a certain test, had they  
9 looked at, you know, any certain anomalies of the particular  
10 device. Case in point would be the video poker example. I  
11 would have him do what we call game recall. Some machines  
12 hold up to 10 to 15 games previous. So if they said the  
13 fourth position hold button didn't work, I would say, okay.  
14 How many in the last 15 games, show me all the games, with  
15 the turn of a key or a button? Show me how many times that  
16 fourth position button was employed in that particular game,  
17 if they were using a game strategy. Then I would see if it  
18 was used 3 out of the last 10 games. Obviously, the issue  
19 with that button probably not working are obviously  
20 diminished at that point.

21 Q. Does the Nevada Gaming Control Board also hear what I  
22 understand are employee registration issues or employee  
23 registration type disputes?

24 A. Yes. All of the employees are statutorily defined as a  
25 gaming employee, have to undergo a background investigation,

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1 including an application and fingerprints and so on, which  
2 is separate and distinct from the one they filled out at the  
3 human resources for the employer themselves. That was filed  
4 with the state. Once we receive the application, we do our  
5 own cursory records check. If we find that there's, based  
6 on the fingerprint information or based on local records  
7 checks, if there's arrest information or other let's say  
8 nefarious acts associated with the person, we would then  
9 assign that case to our background investigation section.  
10 Once they've completed their investigation, if they decide  
11 to object to that individual's employment, they're served  
12 with a letter of rejection. HR is also served with a letter  
13 of objection, and they have to terminate the individual as  
14 an employee or transfer them to what is called a non-gaming  
15 position.

16 Now, at the end of the day on that, a person then has a  
17 60-day window in which to apply to me at the time for an  
18 appeal hearing to reverse, modify, or sustain.

19 Q. Okay. And did you, in fact, oversee those hearings?

20 A. 2,227, I believe.

21 Q. Okay. And in your experience with those 2,227 cases,  
22 what role, if any, did slot technicians play in the process?

23 A. The enforcement agent would pre-file testimony and  
24 documents with me as the hearing officer. I would review  
25 those documents, and most often, if it was a criminal case

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1 that had involved the board as the arresting agency, then I  
2 would be able to review the investigative report filed by  
3 the arresting agent, and in there, I would find interviews  
4 of the slot techs, written voluntary statements of slot  
5 techs, and in so doing, looking at that information, not  
6 only did the district attorney give great deference to it to  
7 decide on a prosecution as a felony, but I would also look  
8 at that and give great deference to it as well.

9 Q. And earlier you mentioned Gaming Board has the authority  
10 to make arrests. Did I get that right?

11 A. It's 436.1140, powers and duties of board and commission  
12 that's granted by the legislature, the power to conduct  
13 arrests.

14 Q. Okay. And what rule, if any, did slot technicians play  
15 in the arrest procedure?

16 A. As a specific example, I recall in some cases, when we  
17 used to have what used to be coin-based games or token-based  
18 games, as opposed to the TITO and cash-based games,  
19 typically the slot techs would have to respond when they had  
20 what we call a coin jam where you couldn't get the coins to  
21 go into the coin head. There would usually be like a lead  
22 slug or something stuck in it by some obvious individual who  
23 was willing to cheat. Now, at that particular point, not  
24 only does the slot tech play a critical role in forming, you  
25 know, the probably cause to effect an arrest, if the

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1 individual was detained, but they would also find themselves  
2 in the chain of custody for the evidence because once  
3 they've opened up the device and take the slugs out of the  
4 coin hopper, as it was called, and then release that to the  
5 agent, then they would find themselves in the chain of  
6 custody.

7 MR. HARLOW: No further questions.

8 **CROSS-EXAMINATION**

9 Q. BY MR. STERN: What percentage of time do slot  
10 technicians at Palace Station deal with the Gaming Control  
11 Board? What percentage of an average week? Do you know?

12 A. My goodness. I have no idea. I've been a field agent  
13 since 1997.

14 Q. I'll settle for I have no idea. Did -- when's the last  
15 time you investigated any case at the Palace Station, if  
16 ever?

17 A. Oh, if ever. Several times.

18 Q. When's the last time?

19 A. 19 -- probably 1997, when I was a supervisor.

20 Q. 1997 they still used coins in slot machines, correct?

21 A. Coins and tokens.

22 Q. That's not the case any more though, is it?

23 A. No, with the advent of the machines being evolved,  
24 obviously, they've gone to the cash-based systems and the  
25 TITO tickets.

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NP SUNSET LLC d/b/a SUNSET STATION  
HOTEL & CASINO**

**and**

**INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501,  
AFL-CIO,**

---

**Case No. 28-RC-222992**

**PETITIONER'S OPPOSITION TO  
EMPLOYER'S REQUEST FOR REVIEW OF  
THE REGIONAL DIRECTOR'S DECISION  
AND DIRECTION OF ELECTION AND  
CERTIFICATION OF REPRESENTATIVE**

**THE MYERS LAW GROUP, A.P.C.**

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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**Case No. 28-RC-222992**

**PETITIONER’S OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW OF THE  
REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION AND  
CERTIFICATION OF REPRESENTATIVE**

Pursuant to Section 102.67(f) of the NLRB Rules and Regulations, Petitioner hereby provides its Opposition to Employer’s Request for Review of the Regional Director’s Decision and Direction of Election and Certification of Representative, as follows:

**I. INTRODUCTION**

Employer’s contentions and unsustainably broad reading of Section 9(b)(3) and *Bellagio, LLC v. NLRB* (D.C. Cir. 2017) 863 F.3d 839 would lead to all employees being classified as “guards” pursuant to Section 9(b)(3) as *all* employees, in some manner, are tasked to protect the property of the employer, especially those that work in an “ultramodern luxury casino.”

In support of its Request, the Employer argues that the Regional Director’s conclusion that the numerous differences between the instant employees and the employees in *Bellagio* are clearly erroneous, departing from Board precedent, and prejudicial error. The Employer’s untenable expansion of the “Guard” designation would include a general duty to report a crime

being committed, such as underage drinking, as somehow equating to the duties of a “guard.” In fact, if the Employer’s argument was sustained, bartender’s and cocktail waitresses would find themselves labeled as “guards.”

The Employer’s belief that *Boeing* should be overturned and that all other precedence should be used in its place is simply improper in this context. The Employer’s task is to show that the Regional Director’s decision was clearly erroneous, and the Employer has fallen woefully short to meet its burden.

As such, the Board should refuse the Employer’s Request for Review and make the Regional Director’s actions final.

## **II. LEGAL ARGUMENT**

The Employer alleges that review should be granted because the decision of the regional director departs from officially-reported board precedent, the decision relies on clearly erroneous and prejudicial factual determinations, and the Region committed prejudicial error. The Employer argues that the regional director should not have relied on *Boeing Co.*, 328 N.L.R.B 128 (1999) because that “precedent is simply wrong, inconsistent with the plain language of the act, conflicts with better-reasoned Board and federal case law, and should be overturned.” Notably, *Boeing* has not been overturned and this is an improper forum in which to make such a request.

A request for review may be granted only upon one or more of the following four grounds: (1) a substantial question of law or policy is raised because of the absence of, or departure from, officially-reported board precedent; (2) the regional director's decision on a substantial factual issue is **clearly erroneous** on the record and such error prejudicially affects the rights of the party; (3) the conduct of any hearing or ruling made in connection with the

proceeding has resulted in prejudicial error; or (4) there are compelling reasons for reconsideration of an important board rule or policy. 29 C.F.R. § 102.67(d).

The Employer admits that its request for review on the first ground is untenable because the Regional Director adhered to the Board precedent of *Boeing*, as stated above. Nevertheless, the Employer asks the Board to ignore the most recent Board Precedent relied on by the Region for the various reasons stated by the Employer, namely, that the Employer disagrees with the Board Precedent. Thus, the Employer may not be granted review on the first ground because it admits that the Board did adhere to Board Precedent.

The Employer also does not raise issues of the third or fourth grounds in which the review may be granted. Therefore, the Employer seems to only be seeking review on the second ground alleging that the Regional Director's decision on a substantial factual issue was clearly erroneous and prejudicially affects the rights of the Employer.

**A. THE EMPLOYER CANNOT SHOW THAT THE REGIONAL DIRECTOR'S CONCLUSION WAS CLEARLY ERRONEOUS**

Review under the clearly erroneous standard is significantly deferential, requiring a “definite and firm conviction that a mistake has been committed.” *See Easley v. Cromartie*, 532 U.S. 234, 242 (2001); *Fisher v. Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1136 (9th Cir. 2011); *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1175 (9th Cir. 2010) (en banc) (per curiam); *see also Miller v. Thane Int’l, Inc.*, 519 F.3d 879, 888 (9th Cir. 2008) (concluding the district court clearly erred). If the district court’s account of the evidence is plausible in light of the entire record, the court of appeals may not reverse, even if it would have weighed the evidence differently. *See Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002); *see also United States v. McCarty*, 648 F.3d 820, 824 (9th Cir. 2011); *Katie A., ex. Rel. Ludin v. Los Angeles County*, 481 F.3d 1150, 1155 (9th Cir. 2007). “Where there are two

permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *United States v. Elliott*, 322 F.3d 710, 715 (9th Cir. 2003); *see also United States v. Stanley*, 653 F.3d 946, 952 (9th Cir. 2011); *United States v. Al Nasser*, 555 F.3d 722, 727 (9th Cir. 2009).

In other words, the Employer must show that there was only one reasonable decision that the Regional Director could come to, otherwise, the decision is not clearly erroneous.

**B. THE REGIONAL DIRECTOR MADE A FACTUAL DETERMINATION BASED ON THE EVIDENCE THAT WAS REASONABLE**

The Employer bases its argument on *Bellagio, LLC v. N.L.R.B.*, 863 F.3d 839, 848-49 (D.C. Cir. 2017), in which the court held that casino surveillance technicians were "guards" under Section 9(b) of the act. The *Bellagio* court stated that "whether specific employees are guards 'can be answered only by carefully examining their duties.'" *Bellagio, LLC*, supra, 863 F.3d at 842. The *Bellagio* court did the factual analysis and held that the regional director should have given more weight to the evidence that surveillance and security officers cannot do their job without the techs, the regional director did not give enough weight to the setting, the board did not give enough weight to the fact that the techs control what information is provided to investigators, and that the techs conduct special operations involving active investigations against coworkers. *Id.* at 850-52. However, in dissent, the judge stated that he would "sustain the Board's conclusion that employees who lack [duties encompassing observing, reporting, or restraining infractions] do not 'enforce rules' and thus do not qualify as statutory guards." *Id.* at 853.<sup>1</sup>

The Employer provides a list of different tasks that would require the Board to find the

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<sup>1</sup> Petitioner merely mentions the dissent to illustrate the deference that should be given the Regional Director's factual analysis, unlike the Employer mentioning the dissent in an effort to overturn *Boeing*. Request at p. 8.

instant employees to be “guards” under the Act. Calling the Employer’s assertions a “stretch” would be putting it lightly. The Employer’s job duty assertions read like the resume of a job seeker who has embellished his duties to impress the potential employer.

The Regional Director provided a factual analysis of the duties of the instant employees. The Regional Director also discussed *Bellagio* and determined that the only similarity between the employees in *Bellagio* and the instant matter are that they both work in a casino. Indeed, the Employer’s request and proposed outcome would result in an irresponsible broadening of the “guard” definition in Section 9(b)(3).

Moreover, the Regional Director based his decision partly on the recent decisions in similar cases in which the Employer relied on *Bellagio, LLC v. NLRB* (D.C. Cir. 2017) 863 F.3d 839. In three cases, the Employer’s Request for Review was denied. *Station GVR Acquisition, LLC*, 2017 WL 5969305 (Nov. 30, 2017) (unpublished order); *NP Palace LLC*, 2018 WL 1782720 (Apr. 12, 2018) (unpublished order); *NP Lake Mead, LLC*, NLRB Case. No. 28-RC-218426 (July 25, 2018) (unpublished order). The Regional Director found the Board’s reasoning in *NP Palace LLC* particularly instructive, which Petitioner agrees, when the Board stated:

In denying review, we agree with the Regional Director that the D.C. Circuit’s decision in *Bellagio, LLC v. NLRB*, 863 F.3d 839 (D.C. Cir. 2017), is distinguishable. Unlike the employees at issue in *Bellagio*, the technicians in the present case play no special role in enforcing the Employer’s rules against their coworkers and other persons beyond that of any other employee, do not control access to the Employer’s surveillance technology or play a key role in its use, and do not otherwise enforce the Employer’s rules in a security context. Instead, the technicians merely provide a defined, supportive role to investigators or state gaming agents through technical assistance at the request of the slot supervisors. In this respect, we reject the Employer’s argument that the court’s decision in *Bellagio* dispensed with the requirement that guards act to enforce the Employer’s rules in a security context. Last, we observe that the technicians are part of the Employer’s Slot Department, whose core function is to install and maintain the Employer’s gaming machines, not the Employer’s separate Security Department, which provides traditional guard services and otherwise handles the Employer’s security needs.

### **III. CONCLUSION**

Based on the foregoing, Petitioner respectfully requests that the Board refuse the Employer's Request for Review and make the Regional Director's actions final.

Respectfully submitted,

**MYERS LAW GROUP, APC**

Date: August 20, 2018

A handwritten signature in black ink, appearing to be "AS" followed by a large "C", is written over a horizontal line.

Adam N. Stern, Esq.  
Justin M. Crane, Esq.  
Attorneys for Petitioner

## CERTIFICATE OF SERVICE

I am employed in the office of a member of the bar of the State of California at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

On August 20, 2018, I served the foregoing document described as **PETITIONER'S OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION AND CERTIFICATION OF REPRESENTATIVE** by serving interested parties in this action, addressed as follows:

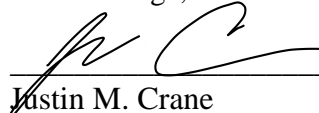
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I am "readily familiar" with the firm's practice of services of process. Under that practice, this document would be deposited:

**(BY EMAIL)** I caused the document(s) to be sent to the person(s) at the electronic address(es) listed above. I did not receive any electronic message or indication that the transmission was unsuccessful. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 20, 2018 at Rancho Cucamonga, California.

  
Justin M. Crane



## AMENDED CERTIFICATE OF SERVICE

I am employed in the office of a member of the bar of the State of California at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

On August 20, 2018, I served the foregoing document described as **PETITIONER'S OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION AND CERTIFICATION OF REPRESENTATIVE** by serving interested parties in this action, addressed as follows:

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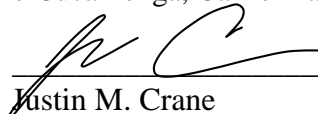
On August 21, 2018, I electronically served the same document on:

Cornele A. Overstreet  
**National Labor Relations Board, Region 28**  
2600 North Central Avenue, Suite 1400  
Phoenix, AZ 85004  
Cornele.Overstreet @nlrb.gov

I am "readily familiar" with the firm's practice of services of process. Under that practice, this document would be deposited:

**(BY EMAIL)** I caused the document(s) to be sent to the person(s) at the electronic address(es) listed above. I did not receive any electronic message or indication that the transmission was unsuccessful. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 21, 2018 at Rancho Cucamonga, California.

  
Justin M. Crane

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL & CASINO

Employer

and

Case 28-RC-222992

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election and Certification of Representative is denied as it raises no substantial issues warranting review.

JOHN F. RING, CHAIRMAN

LAUREN McFERRAN, MEMBER

MARVIN E. KAPLAN, MEMBER

Dated, Washington, D.C., September 7, 2018.

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case

Date Filed

28-CA-225263

August 9, 2018

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer

NP Sunset LLC d/b/a Sunset Station Hotel and Casino.

b. Tel. No. 702-495-3000

c. Cell No. 702-495-3458

f. Fax No.

d. Address (Street, city, state, and ZIP code)

1301 W Sunset Rd, Henderson, NV 89014

e. Employer Representative

Valerie Murzi, Senior Vice President  
of Human Resources

g. e-Mail

valerie.murzi@stationcasinos.c

h. Number of workers employed  
1000

i. Type of Establishment (factory, mine, wholesaler, etc.)  
Hotel and Casino

j. Identify principal product or service  
Gaming and Hospitality

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the last six months the above named employer, through its agents and representative, has failed to bargain in good faith, and collectively with Operating Engineers Local 501. The employer also refuses to recognize and negotiate with Operating Engineers Local 501 as the certified exclusive bargaining representative of full time and regular part time slot technicians.

By these and other acts the above named employer, has interfered with restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the National Labor Relations Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

International Union of Operating Engineers Local, 501 AFL-CIO

4a. Address (Street and number, city, state, and ZIP code)

301 Deauville St, Las Vegas NV, 89106-3912

4b. Tel. No. 702 382-8452

4c. Cell No. 702-622-0846

4d. Fax No.

4e. e-Mail

jsoto@local501.org

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Union of Operating Engineers Local, 501 AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By   
(signature of representative or person making charge)

Jose Soto Director of Organizing  
(Print/type name and title or office, if any)

Tel. No. 702 382-8452

Office, if any, Cell No.  
702-622-0846

Fax No.

e-Mail

jsoto@local501.org

Address 301 Deauville St, Las Vegas NV, 89106-3912

7/30/18  
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL AND CASINO**

Charged Party

and

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

Charging Party

**Case 28-CA-225263**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 9, 2018, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Harriet Lipkin, Partner  
DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004

NP Sunset LLC  
d/b/a Sunset Station Hotel & Casino  
1301 West Sunset Road  
Henderson, NV 89014

August 9, 2018

---

Date

Dawn M. Moore, Designated Agent of  
NLRB

---

Name

***Dawn M. Moore***

---

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC d/b/a  
SUNSET STATION HOTEL CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by the International Union of Operating Engineers Local 501, AFL-CIO (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that NP Palace LLC d/b/a Palace Station Hotel & Casino (Respondent), has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on August 9, 2018, and a copy was served on Respondent by U.S. mail on the same date.

2. (a) At all material times, Respondent has been a limited liability company with an office and place of business in Henderson, Nevada (Respondent's facility), and has been engaged in operating a hotel casino.

(b) During the 12-month period ending August 9, 2018, Respondent in conducting its operations described above in paragraph 2(a), purchased and received at Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Nevada.

(c) In conducting its operations during the 12-month period ending August 9, 2018, Respondent derived gross revenues in excess of \$500,000.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. (a) At all material times, Valerie Murzl has held the position of Corporate Vice President of Human Resources and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times, Respondent's counsel have been agents of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time slot technicians, utility technicians, and slot mechanics employed by the Employer at its facility in Henderson, Nevada; excluding all other employees, office clerical employees, professional employees, and guards and supervisors as defined by the National Labor Relations Act.

(b) On July 19, 2018, a representation election was conducted among employees in the Unit and, on August 1, 2018, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all times since July 19, 2018, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(d) Since about July 26, 2018, the Union has requested that Respondent recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(e) Since about July 27, 2018, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(f) On about July 26, 2018, the Union requested in writing that Respondent furnish the Union with the following information:

1. A list of current employees including their names, dates of hire, rates of pay, job classification, last known address, phone number, date of completion of any probationary period, and Social Security number.
2. A copy of all current company personnel policies, practices or procedures.
3. A statement and description of all company personnel policies, practices or procedures other than those mentioned in Number 2 above.
4. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, legal services, child care or any other plans which relate to the employees.
5. Copies of all current job descriptions.
6. Copies of any company wage or salary plans.
7. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year. A copy of all witness statements for any such discipline.
8. A statement and description of all wage and salary plans which are not provided under number 6 above.

(g) The information requested by the Union, as described above in paragraph 5(f), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(h) Since about July 27, 2018, Respondent, by its counsel, in writing, has failed and refused to furnish the Union with the information requested by it as described above in paragraph 5(f).

6. By the conduct described above in paragraph 5, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

7. The unfair labor practice of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### **ANSWER REQUIREMENT**

The Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to this complaint. The answer must be **received by this office on or before September 10, 2018, or postmarked on or before September 8, 2018.** Respondent should file an original copy of the answer with this office. Respondent should serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlrb.gov](http://www.nlrb.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical



failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** on a date and at a time to be determined, at the Hearing Room, National Labor Relations Board, 300 Las Vegas Boulevard South, Suite 2-901, Las Vegas, Nevada, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to

be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 27<sup>th</sup> day of August 2018.

/s/ *Cornele A. Overstreet*  
Cornele A. Overstreet, Regional Director

Attachments

**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE**

Case 28-CA-225263

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
1301 West Sunset Road  
Henderson, NV 89014

Harriet Lipkin, Partner  
DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004

International Union of Operating Engineers  
Local 501, AFL-CIO  
301 South Deauville Street  
Las Vegas, NV 89106

David A. Rosenfeld, Esquire  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-6430

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL AND CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**AFFIDAVIT OF SERVICE OF: COMPLAINT AND NOTICE OF HEARING (with  
Forms NLRB-4338 and NLRB-4668 attached)**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **August 27, 2018**, I served the above-entitled document(s) by **certified mail or Email**, as noted below, upon the following persons, addressed to them at the following addresses:

NP Sunset LLC d/b/a Sunset Station  
Hotel & Casino  
1301 West Sunset Road  
Henderson, NV 89014  
***Certified – 7017 3040 0000 4205 0023***

Harriet Lipkin, Partner  
DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004  
Email: [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com)

International Union of Operating Engineers  
Local 501, AFL-CIO  
301 South Deauville Street  
Las Vegas, NV 89106  
Email: [jsoto@local501.org](mailto:jsoto@local501.org)

David A. Rosenfeld, Esquire  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-6430  
Email: [drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net)

**August 27, 2018**

Date

Dawn M. Moore,  
Designated Agent of NLRB

Name

***/s/ Dawn M. Moore***

Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC d/b/a SUNSET STATION  
HOTEL CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**ERRATA TO COMPLAINT AND NOTICE OF HEARING**

On August 27, 2018, a Complaint and Notice of Hearing issued in the above-captioned case. On page 1, line 5 of the introductory paragraph, the name of Respondent was erroneously listed as “NP Palace LLC d/b/a Palace Station Hotel & Casino.” The correct name should be “NP Sunset LLC d/b/a Sunset Station Hotel & Casino (Respondent).” On page 2, line 2 of paragraph 5(b), an erroneous verb tense was used; “certifies” should be substituted by “certified.”

Dated at Phoenix, Arizona, this 10<sup>th</sup> day of August 2018.

**/s/ Cornele A. Overstreet**

Cornele A. Overstreet, Regional Director

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC D/B/A SUNSET STATION  
HOTEL AND CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**AFFIDAVIT OF SERVICE OF: ERRATA TO COMPLAINT AND NOTICE OF  
HEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **September 10, 2018**, I served the above-entitled document(s) by **Email**, as noted below, upon the following persons, addressed to them at the following addresses:

Harriet Lipkin, Partner  
DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, DC 20004  
Email: [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com)

David A. Rosenfeld, Esquire  
Weinberg, Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-6430  
Email: [drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net)

**September 10, 2018**

Date

Dawn M. Moore,  
Designated Agent of NLRB

Name

***/s/ Dawn M. Moore***

Signature



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NP SUNSET LLC d/b/a  
SUNSET STATION HOTEL & CASINO**

**and**

**Case 28-CA-225263**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO**

**ANSWER TO COMPLAINT AND NOTICE OF HEARING  
AND AFFIRMATIVE DEFENSES**

Comes now Respondent NP Sunset LLC d/b/a Sunset Station Hotel & Casino (“Sunset” or “Employer”), by and through counsel, and for its Answer to the Complaint and Notice of Hearing (“Complaint”) issued in the above-captioned matter, states as follows:

1. Sunset admits the truth of the allegation in paragraph 1 of the Complaint.
2. Sunset admits the truth of the allegations in paragraph 2 of the Complaint.
3. Sunset admits the truth of the allegation in paragraph 3 of the Complaint, but clarifies that International Union of Operating Engineers Local 501, AFL-CIO (“Union”) admits into membership employees other-than guards.
4. Sunset denies that Valerie Murzl is the Respondent’s Corporate Vice President of Human Resources, and that Murzl has been a supervisor of Respondent within the meaning of Section 2(11) of the Act. Sunset admits that Murzl is an agent of Respondent within the meaning of Section 2(13) of the Act.

Sunset denies the truth of the allegation in paragraph 4(b) of the Complaint because it is vague and lacks requisite and meaningful specificity.

5. Sunset denies the truth of the allegation in paragraph 5(a) of the Complaint, because “All full-time . . . slot technicians and utility technicians employed by [Sunset] . . .” are “guards” as defined by the Act. Sunset denies that it employs regular part-time and/or “extra board” slot technicians and utility technicians. Sunset denies that it employs full-time and regular part-time and/or “extra board” slot mechanics.

Sunset admits that on July 19, 2018, a representation election was conducted among employees in the Unit.

Sunset denies the truth of the allegation in paragraph 5(c) of the Complaint.

Sunset admits the truth of the allegations in paragraph 5(d), (e), (f) and (h) of the Complaint.

Sunset denies the truth of the allegation in paragraph 5(g) of the Complaint.

6. Sunset denies the truth of the allegation in paragraph 6 of the Complaint.

7. Sunset denies the truth of the allegation in paragraph 7 of the Complaint.

Sunset denies any and all allegations in the Complaint absent a specific admission.

### **AFFIRMATIVE DEFENSES**

Comes now NP Sunset LLC d/b/a Sunset Station Hotel & Casino, and for its affirmative defenses, states as follows:

1. The Complaint must be dismissed because it fails to state a claim upon which relief may be granted.

2. The Regional Director’s Certification of Representative was issued without legal basis or support, is inconsistent with the law, and is not valid and enforceable, because the Union admits into membership employees other than guards, and the bargaining unit is composed of “guards” as defined by the Act.

3. Respondent is privileged to refuse to recognize and bargain with the Union because the Certification of Representative was issued without legal basis and support.

4. The Respondent is committed to complying with the National Labor Relations Act, and shall satisfy all obligations, including the duty to recognize and bargain, and the derivative duty to furnish information relevant and necessary to the collective bargaining process, upon the Union's request, in the event that a valid legal order is issued, compelling Respondent to do so.

Date: September 5, 2018

Respectfully Submitted,

/s/ Harriet Lipkin

Harriet Lipkin  
DLA Piper LLP (US)  
500 Eighth Street NW  
Washington, D.C. 20004  
202.799.4250  
Harriet.Lipkin@dlapiper.com

Kevin Harlow  
DLA Piper LLP (US)  
401 B Street, Suite 1700  
San Diego, CA 92101  
619.699.3402  
Kevin.Harlow@dlapiper.com

Attorneys for Employer,  
NP Sunset LLC d/b/a  
Sunset Station Hotel & Casino

**CERTIFICATE OF SERVICE**

I hereby certify this 5th day of September, 2018, that a copy of the Answer to Complaint and Notice of Hearing and Affirmative Defenses was served via email to:

Cornele A. Overstreet  
National Labor Relations Board  
2600 North Central Ave., Suite 1400  
Phoenix, AZ 85004  
Cornele.Overstreet@nlrb.gov

David A. Rosenfeld  
Weinberg Roger & Rosenfeld  
1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-6430  
drosenfeld@unioncounsel.net

Elise Oviedo  
National Labor Relations Board  
Las Vegas Resident Office  
Foley Federal Building  
300 S. Las Vegas Blvd., Suite 2-901  
Las Vegas, NV 89101  
Elise.Oviedo@nlrb.gov

Adam Stern  
John M. Tomberlin  
The Myers Law Group  
9327 Fairway View Place, Suite 100  
Rancho Cucamonga, CA 91730  
Laboradam@aol.com  
JTomberlin@myerslawgroup.com

Jose Soto, Director of Organizing  
International Union of Operating Engineers,  
Local 501  
301 Deauville Street  
Las Vegas, NV 89106-3912  
Jsoto@local501.org

/s/ Christine Yang  
An Employee of DLA Piper LLP (US)

**From:** [Lipkin, Harriet](#)  
**To:** [Oviedo, Elise F.](#)  
**Cc:** [Lipkin, Harriet](#); [Yang, Christine](#); [Pastor, Sherrie](#)  
**Subject:** FW: NP Sunset LLC d/b/a Sunset Station Hotel and Casino - Case 28-CA-225263  
**Date:** Monday, September 10, 2018 3:37:27 PM  
**Attachments:** [image005.png](#)  
[ERR.28-CA-225263.Errata to CNOH 9-10-18.pdf](#)

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Dear Ms. Oviedo,

We are writing to confirm our communication that Respondent Sunset Station does not intend to file anything in response to the Errata. Pursuant to our communications, Respondent shall stand on its Answer, and is not required to file anything to do so. Please reply if otherwise.

Thanks - Harriet

**Harriet Lipkin**

Partner

**T** +1 202.799.4250

**F** +1 202.799.5250

**M** +1 202.669.0099

**E** [harriet.lipkin@dlapiper.com](mailto:harriet.lipkin@dlapiper.com)



DLA Piper LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
United States  
[www.dlapiper.com](http://www.dlapiper.com)

---

**From:** Moore, Dawn M. <DawnM.Moore@nlrb.gov>  
**Sent:** Monday, September 10, 2018 5:28 PM  
**To:** Lipkin, Harriet <Harriet.Lipkin@dlapiper.com>; drosenfeld@unioncounsel.net  
**Subject:** NP Sunset LLC d/b/a Sunset Station Hotel and Casino - Case 28-CA-225263

[EXTERNAL]

---

Please see the attached document.

*Dawn M. Moore*

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NATIONAL LABOR  
RELATIONS BOARD



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**From:** (b) (6), (b) (7)(C)  
**To:** [Oureshi, Farah Z.](#); [Dreeben, Linda J.](#); [Overstreet, Cornele](#); [Oviedo, Elise F.](#); [Robb, Peter](#); [harriet.lipkin@dlapiper.com](#); [Stanley.panikowski@dlapiper.com](#); [laboradam@aol.com](#); [ML-Court-Enforcement](#)  
**Subject:** International Operating Engineers Local 501 v. NLRB; Station GRV Acquisition, etc. v. NLRB, Cases 18-72434 and 18-1236  
**Date:** Thursday, September 13, 2018 11:52:55 AM  
**Attachments:** [Oppositon to Notice of Multidistrict Petitions 18-72434, 18-1236.pdf](#)

---

Attached please find the Opposition to Notification of Multicircuit Petitions for Review we filed with the Ninth and D.C. Circuits. We will be filing this today with the MDL Panel.

(b) (6), (b) (7)(C)

opeiu29 afl-cio(1)

(b) (6), (b) (7)(C) **David A. Rosenfeld**

Weinberg, Roger & Rosenfeld

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**UNITED STATES JUDICIAL PANEL  
ON MULTIDISTRICT LITIGATION**

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL  
501 AFL-CIO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent.

9th Cir. Case No. 18-72434

Board Case Nos. 28-CA-211043 and  
28-CA-216411, 366 N.L.R.B.  
No. 175

STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL  
501 AFL-CIO,

Proposed Intervenor.

D.C. Cir. Case No. 18-1236

Board Case Nos. 28-CA-211043 and  
28-CA-216411, 366 N.L.R.B.  
No. 175.

**OPPOSITION TO NOTIFICATION OF MULTICIRCUIT  
PETITIONS FOR REVIEW**

On September 12, 2018, with respect to the above captioned cases in the Ninth Circuit and the D.C. Circuit, International Union of Operating Engineers, the National Labor Relations Board has filed a Notice of Multicircuit Petitions for Review pursuant to 28 U.S.C. § 2112(a)(3) and the Judicial Panel's Rules 25.1



through 25.4. For the reasons stated below, this Panel should reject the Board's Motion and instead order the case filed in the D.C. Circuit to be transferred to the Ninth Circuit.

We file this Motion in opposition of the Board's notice recognizing that this Court often acts quickly to randomly select a circuit where two Petitions for Review have been filed in different circuits. This case presents the unusual circumstance where the Board's request should be denied, and the Petition filed in the D.C. Circuit by the employer should be transferred to the Ninth Circuit.

The Employer's Petition for Review is attached as Exhibit A to this Opposition and is Case No. 18-1236 in the D.C. Circuit.

The Union's Petition for Review is attached as Exhibit B to this Opposition and is Case No. 18-72434 in the Ninth Circuit.

The circumstances are relatively straightforward.

On April 12, 2018, the National Labor Relations Board issued a Decision and Order granting a Motion for Summary Judgment on a test of certification in Board Case No. 28-RC-203653. Petitioner had won an election conducted by the NLRB, and the employer refused to bargain with the Union. The Board's decision is entitled *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 N.L.R.B. No. 58 (Apr. 12, 2018), *motion for reconsideration denied*, 366 N.L.R.B. No. 91 (May 17, 2018). The case is Board Case No. 28-CA-214925. Thereafter, the employer filed a Petition for Review in the D.C. Circuit, which was D.C. Circuit Case No. 18-1100. The Union, which was the Charging Party before the Board, filed a separate Petition for Review in the Ninth Circuit, Case No. 18-71124.

The Board immediately filed an appropriate Notice of Multicircuit Petitions for Review, and this Court ordered those cases transferred to the Ninth Circuit. They are pending in Ninth Circuit Case Nos. 18-71124 and 18-72079. The Board has filed an additional Petition for Enforcement, which is Ninth Circuit Case No. 18-72121.

That case pending before the D.C. Circuit, which was transferred to the Ninth Circuit, has now been consolidated with the Union's Petition for Review as well as the Cross-Petition for Enforcement filed by the Board in Ninth Circuit Case No. 18-72121.

The circumstance of this recent decision involves a case that is the follow on to the original case described above involving a direct test of certification. This case involves the decision of the National Labor Relations Board in Board Case Nos. 28-CA-211043 and 28-CA-216411, 366 N.L.R.B. No. 175 (Aug. 27, 2018), a copy of which is attached as Exhibit C to this Motion and which is attached to each Petition for Review.

As indicated in the first page of that decision, this case involves the employer's refusal to provide information, which is, in effect, another refusal to bargain. Its refusal is based upon its decision to test the Board's certification of the Union as a bargaining representative and its refusal to bargain in 366 N.L.R.B. No. 58, which is now pending in the Ninth Circuit, as explained above.

First, whether this recent Board Decision will be enforced or not is wholly dependent upon the outcome of the earlier cases now pending in the Ninth Circuit.

There is no reason why this more recent case filed by the employer should be in the D.C. Circuit at all. The entire case will be resolved in the Ninth Circuit

based on the underlying test of certification, which is now properly before the Ninth Circuit.

Second, the Union has filed a Motion to Consolidate all the pending actions in the Ninth Circuit, including the most recently filed Petition for Review, Ninth Circuit Case No. 18-72434. The Motion is attached as Exhibit D. Should the Ninth Circuit consolidate all the matters, this Court could not transfer the latest case from the Ninth Circuit because it would be without authority over the case that is properly in the Ninth Circuit after this Court made the earlier Decision to find the Ninth Circuit as the appropriate court for the earlier cases. The Union has also filed a Notice of Related Case, which the Ninth Circuit has not ruled upon.

This panel should therefore not invoke the random selection process but rather either stay the case in the D.C. Circuit, Case No. 18-1236, or transfer the case in the D.C. Circuit to the Ninth Circuit, where it should be consolidated with the earlier case involving the test of certification.

If this Court were to invoke the random selection process and the case properly filed in the Ninth Circuit transferred to the D.C. Circuit, this would result in the anomalous situation where the same dispute would be pending in two different circuits and where the underlying case would be properly pending in the

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Ninth Circuit. At most, all the D.C. Circuit could do is stay the case and then transfer it back to the Ninth Circuit under the authority of 28 U.S.C. § 2112(a)(5) after the record is filed.

Dated: September 12, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL  
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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), International Union of Operating Engineers Local 501, AFL-CIO certifies that its Opposition to Notification of Multicircuit Petitions for Review, contains 887 words of proportionately-spaced, 14-point type, the word processing system used was Microsoft Word 2010.

Dated: September 12, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ David A. Rosenfeld  
DAVID A. ROSENFELD

Attorneys for INTERNATIONAL UNION  
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## CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September 2018, a copy of the foregoing **OPPOSITION TO NOTIFICATION OF MULTICIRCUIT PETITIONS FOR REVIEW** was served electronically, in accordance with applicable ECF procedures to the following courts:

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Office of Executive Secretary (Vacant)  
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National Labor Relations Board*

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Regional Director, Region 28  
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*National Labor Relations Board*

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Additionally, I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

***CLERKS OF THE COURT***

Molly Dwyer  
Clerk of the Court  
United States Court of Appeals  
For the Ninth Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939

Mark J. Langer  
Clerk of the Court  
United States Court of Appeals  
For the District of Columbia Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Avenue, NW, Room 5423  
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I certify that the above is true and correct. Executed at Alameda, California, on September 12, 2018.

/s/ Karen Kempler  
Karen Kempler

1\986405

# **EXHIBIT A**



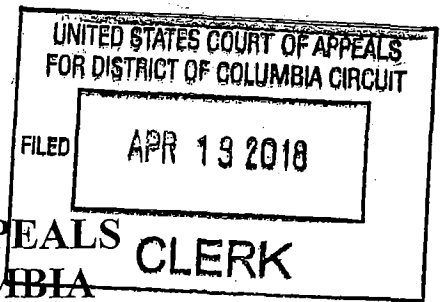
UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT

APR 19 2018

RECEIVED

NLRB CASE No. 28-CA-214925

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA



STATION GVR ACQUISITION, LLC  
D/B/A GREEN VALLEY RANCH RESORT SPA CASINO,

*PETITIONER,*

v.

NATIONAL LABOR RELATIONS BOARD,

*RESPONDENT.*

---

ON PETITION FOR REVIEW OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

---

PETITION FOR REVIEW OF AN ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD

---

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*Attorneys for Petitioner  
Station GVR Acquisition, LLC  
d/b/a Green Valley Ranch Resort  
Spa Casino*



Petitioner Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino ("Petitioner"), hereby petitions the Court for review of, and respectfully request that the Court set aside, the Decision and Order of the National Labor Relations Board entered on April 12, 2018, which, except as otherwise modified, summarily affirmed the Regional Director's determination that Petitioner violated Sections 8(a)(1) and (5) of the National Labor Relations Act. *Station GVR Acquisition, LLC*, 366 N.L.R.B. No. 58 (slip op. at 1) (attached).

Respectfully Submitted,

DATED: April 13, 2018

**DLA PIPER LLP (US)**  
HARRIET LIPKIN  
KEVIN HARLOW

By Harriet Lipkin  
HARRIET LIPKIN

*Attorneys for Petitioner*  
*Station GVR Acquisition, LLC*  
*d/b/a Green Valley Ranch Resort Spa Casino*

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO. Case 28-CA-214925**

April 12, 2018

**DECISION AND ORDER**

BY CHAIRMAN KAPLAN AND MEMBERS MCFERRAN  
AND EMANUEL

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the International Union of Operating Engineers Local 501, AFL-CIO (the Union) on February 15, 2018, the General Counsel issued a complaint on February 22, 2018, alleging that Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 28-RC-203653. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(d). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On February 28, 2018, the General Counsel filed a Motion for Summary Judgment. On March 1, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The Respondent admits its refusal to bargain but contests the validity of the Union's certification on the basis of its contentions, raised and rejected in the underlying representation proceeding, that the employees in the petitioned-for unit are guards as defined in Section 9(b)(3) of the Act and that the Regional Director erred in refusing to ban the use of cell phones and other electronic devices within the voting area.<sup>1</sup>

<sup>1</sup> The Respondent denies par. 5(a) of the complaint, which sets forth the appropriate unit. The unit issue, however, was fully litigated and resolved in the underlying representation proceeding. Accordingly, the Respondent's denial of the appropriateness of the unit does not raise any litigable issue in this proceeding. In addition, the Respondent

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.<sup>2</sup> We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a limited liability company with an office and place of business in Henderson, Nevada, and has been engaged in operating a hotel and casino.

During the 12-month period ending February 15, 2018, the Respondent, in conducting its operations described above, purchased and received at the Respondent's facility goods valued in excess of \$50,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the representation election held on August 25, 2017,<sup>3</sup> the Union was certified on October 16<sup>4</sup> as the

advances an affirmative defense that could not have been raised in the representation proceeding: that the complaint fails to state a claim under the Act upon which relief can be granted. The Respondent has not offered any explanation or evidence to support this bare assertion. Thus, we find that this affirmative defense is insufficient to warrant denial of the General Counsel's motion for summary judgment in this proceeding. See, e.g., *George Washington University*, 346 NLRB 155, 155 fn. 2 (2005), *enfd.* 2006 WL 4639237 (D.C. Cir. 2006); *Circus Circus Hotel*, 316 NLRB 1235, 1235 fn. 1 (1995).

<sup>2</sup> The Respondent claims there are "special circumstances" in this case akin to those the Board found in *Brinks, Inc. of Florida*, 276 NLRB 1 (1985). In that case, the Board directed a hearing to determine whether the charging party union was affiliated with a union that admits to membership employees other than guards, a contention that had been overruled without a hearing in the representation case. Here, there has been a hearing on whether the unit employees are guards within the meaning of Section 9(b)(3) of the Act; the Respondent simply disagrees with the determination that they are not.

<sup>3</sup> All dates hereinafter are 2017 unless otherwise noted.

<sup>4</sup> By unpublished order dated November 30, the Board denied the Respondent's request for review.

exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: all full-time, regular part-time, and extra board slot technicians and utility technicians employed by the employer at its Henderson, Nevada facility.

Excluded: excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

#### B. Refusal to Bargain

Since at least October 31, the Union has requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since November 6, the Respondent has failed and refused to do so.

We find that the Respondent's conduct constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing since November 6 to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964).

#### ORDER

The National Labor Relations Board orders that the Respondent, Station GVR Acquisition, LLC d/b/a Green

Valley Ranch Resort Spa Casino, Henderson, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the International Union of Operating Engineers Local 501, AFL-CIO (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: all full-time, regular part-time, and extra board slot technicians and utility technicians employed by the employer at its Henderson, Nevada facility.

Excluded: excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Henderson, Nevada, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 6, 2017.

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c)<sup>1</sup> Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 12, 2018

\_\_\_\_\_  
Marvin E. Kaplan, Chairman

\_\_\_\_\_  
Lauren McFerran, Member

\_\_\_\_\_  
William J. Emanuel, Member

WE WILL NOT fail and refuse to recognize and bargain with the International Union of Operating Engineers Local 501, AFL-CIO (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following appropriate bargaining unit:

Included: all full-time, regular part-time, and extra board slot technicians and utility technicians employed by the employer at its Henderson, Nevada facility.

Excluded: excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

STATION GVR ACQUISITION LLC, D/B/A GREEN VALLEY RANCH RESORT SPA CASINO

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-214925> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 13, 2018, I caused to be filed one original and four copies of the foregoing *Petition for Review of an Order of the National Labor Relations Board* ("*Petition*") with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit. Further, I caused to be served by overnight express mail the *Petition* on the parties participating in the underlying National Labor Relations Board proceeding.

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National Labor Relations Board  
2600 North Central Avenue – Suite 1400  
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In addition, I caused to be served by hand delivery to the persons listed below:

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Linda J. Dreeben  
Deputy Associate General Counsel  
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Washington, DC 20570

I certify under penalty of perjury that the above is true and correct. Executed at Washington, D.C on April 13, 2018.

Respectfully Submitted,

By Christine Yang  
An Employee of DLA Piper LLP (US)

NLRB CASE No. 28-CA-214925

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA**

STATION GVR ACQUISITION, LLC  
D/B/A GREEN VALLEY RANCH RESORT SPA CASINO,

*PETITIONER,*

v.

NATIONAL LABOR RELATIONS BOARD,

*RESPONDENT.*

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**ON PETITION FOR REVIEW OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD**

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**CORPORATE DISCLOSURE STATEMENT OF PETITIONER STATION GVR  
ACQUISITION, LLC D/B/A GREEN VALLEY RANCH RESORT SPA CASINO  
(FED. R. APP. P. 26.1)**

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*Attorneys for Petitioner  
Station GVR Acquisition, LLC  
d/b/a Green Valley Ranch Resort  
Spa Casino*



Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Petitioner Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino respectfully submits the following Corporate Disclosure Statement.

Petitioner Station GVR Acquisition, LLC is 100% owned by NP Opco LLC, which is 100% owned by NP Opco Holdings LLC, which, in turn, is 100% owned by Station Casinos LLC. 100% of the voting interests in, and management and control of, Station Casinos LLC is held by Red Rock Resorts, Inc., a publicly traded company ("RRR"). Station Holdco LLC holds all of the economic interests in Station Casinos LLC. RRR holds approximately 59% of the economic interests in, and controls, Station Holdco LLC. The economic interests in Station Holdco LLC that are not held by RRR (approximately 41%) are held by non-publicly traded entities (the "Fertitta Entities") controlled by Frank J. Fertitta III, the Chief Executive Officer and Chairman of the Board of Directors of RRR, and Lorenzo J. Fertitta, Vice Chairman of the Board of RRR (individuals or entities associated with current or former management of RRR unrelated to the Fertitta Entities own approximately 1.4% of the economic interests in Station Holdco that are not held by RRR, with the balance, or approximately 98.6%, held by the Fertitta Entities). RRR does not have a parent company and other than the controlling interests of the Fertitta Entities, no entity has a 10% or greater ownership interest in RRR.

The general nature and purpose of Station GVR Acquisition, LLC is to operate a resort, spa and casino located in Henderson, NV.

Respectfully Submitted,

DATED: April 13, 2018

**DLA PIPER LLP (US)**  
HARRIET LIPKIN  
KEVIN HARLOW

By Harriet Lipkin  
HARRIET LIPKIN

*Attorneys for Petitioner*  
*Station GVR Acquisition, LLC*  
*d/b/a Green Valley Ranch Resort Spa Casino*

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 13, 2018, I caused to be filed the foregoing *CORPORATE DISCLOSURE STATEMENT OF PETITIONER* ("*Disclosure*") with the Clerk of the Court of the United States Court of Appeals for the District of Columbia Circuit. Further, I caused to be served by overnight express mail the Disclosure on the parties participating in the underlying National Labor Relations Board proceeding.

Cornele A. Overstreet  
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National Labor Relations Board  
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Las Vegas, NV 89101

In addition, I caused to be served by hand delivery to the persons listed below:

Peter B. Robb  
General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570

Linda J. Dreeben  
Deputy Associate General Counsel  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570

I certify under penalty of perjury that the above is true and correct. Executed at Washington, D.C on April 13, 2018.

Respectfully Submitted,

By Christine Yang  
An Employee of DLA Piper LLP (US)

## **EXHIBIT B**

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
\_\_\_\_\_

INTERNATIONAL UNION OF OPERATION ENGINEERS LOCAL 501,  
AFL-CIO,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

\_\_\_\_\_  
ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD  
CASE NO. 366 NLRB NO. 175, CASES 28-CA-211043 AND 28-216411  
\_\_\_\_\_

PETITION FOR REVIEW OF INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 501, AFL-CIO  
\_\_\_\_\_

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*Attorneys for Petitioner,* INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 501, AFL-CIO

International Union of Operating Engineers Local 501, AFL-CIO hereby petitions for review from the Board Decision and Order of the National Labor Relations Board, entitled *Station GRV Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO*, issued as Case 377 NLRB No. 175. A copy of the Board's Decision and Order is attached as Exhibit A.

Dated: September 4, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ DAVID A. ROSENFELD  
David A. Rosenfeld

Attorneys for Petitioner  
INTERNATIONAL UNION OF  
OPERATION ENGINEERS LOCAL 501,  
AFL-CIO

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### **CERTIFICATE OF SERVICE**

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I certify that on September 4, 2018, the **PETITION FOR REVIEW OF INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 501, AFL-CIO** was served on all parties or their counsel of record by electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kshaw@unioncounsel.net](mailto:kshaw@unioncounsel.net) to the email addresses set forth below:

Farah Qureshi  
Associate Executive Secretary  
Office of Executive Secretary (Vacant)  
National Labor Relations Board  
1015 Half Street SE  
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*International Union of Operating Engineers  
Local 501, AFL-CIO*

I certify that the above is true and correct. Executed at Alameda, California,  
on September 4, 2018.

/s/ Katrina Shaw  
Katrina Shaw

145857\984877



*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO.** Case 28-CA-211043 and 28-CA-216411

August 27, 2018

**DECISION AND ORDER**

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

The General Counsel seeks partial summary judgment in this case on the grounds that there are no genuine issues of material fact as to certain allegations in the complaint, and that the Board should find, as a matter of law, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of a unit of the Respondent's employees.<sup>1</sup>

Pursuant to charges filed by the Union on December 5, 2017, and March 8, 2018, and an amended charge filed on March 22, 2018, the General Counsel issued a consolidated complaint (complaint) on April 27, 2018.<sup>2</sup> The complaint alleges, among other things, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information. The Respondent filed an answer admitting in part and denying in part the allegations of the complaint.

Thereafter, on April 12, the Board issued a Decision and Order granting the General Counsel's Motion for Summary Judgment in a related refusal-to-bargain case in which the Respondent contested the Union's certification in Case 28-RC-203653 as the bargaining representative of the employee unit at issue in this proceeding. *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 58 (2018).<sup>3</sup> In that case, the Board found that since November 6, 2017, the Respondent violated Section 8(a)(5) and (1) by failing and refusing to recognize and bargain with the Union. *Id.*, slip op. at 2. On April 13, the Respondent filed a Petition for Review of the Board's April 12 Order, which

<sup>1</sup> The General Counsel does not seek summary judgment with respect to allegations, in pars. 6(f) through 6(j) of the complaint, that the Respondent violated Sec. 8(a)(5) and (1) of the Act by changing the amount of notice given to bargaining unit employees when their work schedules are changed.

<sup>2</sup> All subsequent dates are in 2018, unless otherwise indicated.

<sup>3</sup> On May 17, the Board issued an Order denying the Union's Motion for Reconsideration of the Board's April 12 Decision and Order. *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 91 (2018).

is pending before the United States Court of Appeals for the District of Columbia Circuit.

On May 8, the General Counsel filed a Motion for Partial Summary Judgment in the current proceeding. On May 14, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. The Union filed a Joinder in Motion for Summary Judgment and Request for Additional Remedies, the Respondent filed an opposition to the Union's Motion and request for additional remedies, and the Union filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Partial Summary Judgment**

At paragraph 6(a) of the complaint, the General Counsel alleges that about November 6, 2017, the Union requested the following information from the Respondent:

1. A list of current employees including their names, dates of hire, rates of pay, job classifications, last known address, phone number, date of completion of any probationary period, and social security number;
2. Copies of all current job descriptions;
3. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last 24 months;
4. A copy of all company fringe benefit plans including retirement, sick time, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, education, legal services, child care or any plans which relate to the employees;
5. Copies of any company wage or salary plans;
6. A copy of all current company personnel policies, practices and procedures;
7. Copies of all contract agreements related with Property Management and/or owner(s);
8. Copies of all Covenants, Conditions and Restrictions (CCM and/or any additional information related to said agreements in the above[]); and
9. Complete Enclosed Employer Contact Information Request Form (E411).

Complaint paragraph 6(b) alleges that since March 8, 2018, the Union requested the following information from the Respondent:

1. Please provide your policy and procedures in regards to slot tournaments;



2. How often are slot tournaments held at Green Valley Ranch Hotel and Casino;
3. What type of notice is provided for special projects, like slot tournaments; and
4. What are the safety policies in regards to installs, conversions and preventative maintenance to slot machines when tournaments take place.

In addition, the complaint alleges that since November 6, 2017, and March 8, 2018, respectively, the Respondent has failed and refused to furnish the Union with the information described in paragraphs 6(a) and 6(b), and that by the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith in violation of Section 8(a)(5) and (1) of the Act.

In its answer, the Respondent admits its refusal to furnish the information, but continues to contest the validity of the certification on the basis of the issues raised and decided by the Board in the underlying representation proceeding. In its response to the Notice to Show Cause, the Respondent further contends that the requested information is not limited to bargaining unit employees and there is no showing of the necessity and relevance of the information as it relates to nonunit employees. With respect to the unit employees, the Respondent asserts that the requested social security numbers are not presumptively relevant and there has been no showing of the necessity of such information. In addition, the Respondent contends that certain requested items, including wage and salary plans, policies related to the security and integrity of the Respondent's gaming machines, information about terms negotiated with third party vendors, and precautions taken to combat illegal gaming and money laundering, are confidential and require a trier of fact to balance the Union's need for the information with the Respondent's confidentiality interests.

With respect to the arguments contesting the Union's certification, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not suggest there is any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We further find that there are no factual issues warranting a hearing with respect to most of the items in the

Union's information request.<sup>4</sup> Specifically, with the exceptions of the request for employee social security numbers,<sup>5</sup> contract agreements related with property management and/or owner(s), and the covenants, conditions and restrictions,<sup>6</sup> the type of information requested by the Union is presumptively relevant for purposes of collective bargaining and the Respondent has not asserted any basis for rebutting the presumptive relevance. See, e.g., *CVS Albany, LLC d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), enfd. mem. 709 Fed. Appx. 10 (D.C. Cir. 2017) (per curiam), and *Metro Health Foundations, Inc.*, 338 NLRB 802, 803 (2003). With respect to the Respondent's claims of confidentiality, "the confidentiality claim must be timely raised . . . and a blanket claim of confidentiality will not satisfy [its] burden of proof." *Mission Foods*, 345 NLRB 788, 791 (2005). Here, in its response to the Notice to Show Cause, the Respondent for the first time asserted nothing more than a blanket claim of confidentiality, without any contention that it has made any offer to accommodate the Union's legitimate interest in relevant information. As such, the Respondent's assertion of confidentiality does not excuse its failure to furnish any of the requested information.

Accordingly, we grant the Motion for Partial Summary Judgment with the exceptions of the allegations concerning the Union's request for social security numbers and its request for the information described in paragraphs 6(a) 7 and 6(a) 8 of the complaint.

On the entire record, the Board makes the following

<sup>4</sup> The Respondent's contention, that the information request is not specifically limited to bargaining unit employees, does not justify its blanket refusal to comply with the information request. *DIRECTV U.S. DIRECTV Holdings LLC*, 361 NLRB No. 124, slip op. at 2 (2014). However, in accordance with well-established precedent, to the extent the Union's information request could be construed covering both unit and nonunit employees, it shall be construed as pertaining to unit employees' terms and conditions of employment. See *Id.*; *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003).

<sup>5</sup> The Board has held that employee social security numbers are not presumptively relevant and that the requesting union must demonstrate the relevance of such information. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997) (per curiam). Here the Union's request did not specify why it wanted this information and the Union has not otherwise demonstrated its relevance. See *Pallet Cos.*, 361 NLRB 339, 340 fn. 4 (2014), enfd. mem. 634 Fed. Appx. 800 (D.C. Cir. 2015) (per curiam). We therefore deny summary judgment as to this item and remand this issue to the Region for further appropriate action.

<sup>6</sup> The requests for contract agreements and for covenants, conditions and restrictions appear to seek information about matters outside the bargaining unit and, as such, are not presumptively relevant. See *KIRO, Inc.*, 317 NLRB 1325, 1328 (1995) (information with respect to commercial transactions between the respondent and other company not presumptively relevant). Therefore, we deny summary judgment with respect to those items and remand those issues to the Regional Director for further appropriate action.



## FINDINGS OF FACT

## I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Henderson, Nevada, and has been engaged in operating a hotel and casino.

In conducting its operations during the 12-month period ending December 5, 2017, the Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Sheila Lee and Valerie Mural, the Respondent's senior vice president of human resources, have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.<sup>7</sup>

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and extra board slot technicians and utility technicians employed by the Employer at its Henderson, Nevada facility, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

At all times since October 16, 2017, the Union has been certified as the exclusive collective-bargaining representative of the employees in the above-referenced unit under Section 9(a) of the Act.

About November 6, 2017, and March 8, 2018, the Union requested that the Respondent furnish information described above to the Union, and the Respondent failed and refused to furnish the requested information. With the exceptions of social security numbers, contract agreements, and the covenants, conditions and restrictions, the requested information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, and the Respondent's failure to furnish this information constitutes an unlawful refusal to bargain collectively

with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since about November 6, 2017, and March 8, 2018, to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondents' unit employees, we shall order the Respondents to furnish the Union with information requested November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with Property Management and/or owner(s), and copies of covenants, conditions and restrictions, (CCM and/or any additional information related to said agreements in the above).<sup>8</sup>

The Union requests additional enhanced remedies.<sup>9</sup> Contrary to the Union's assertions, there has been no showing that the Board's traditional remedies are insufficient to redress the information request violations committed by the Respondent. Accordingly, we deny the Union's request for additional remedies.

## ORDER

The National Labor Relations Board orders that the Respondent, Station GVR Acquisition, LLC d/b/a Green

<sup>7</sup> In its answer, the Respondent denies the complaint allegation that Sheila Lee is its director of human resources, but admits that Lee is a supervisor and an agent within the meaning of the Act.

<sup>8</sup> The General Counsel has requested that the initial certification year be extended to begin on the date that the Respondent commences to bargain in good faith with the Union. Because this same remedy was requested and granted in our previous decision, it is unnecessary to order it here again. *Station GVR Acquisition, LLC*, 366 NLRB No. 58, slip op. at 2.

<sup>9</sup> Because the Union has not shown that the traditional remedies are inadequate, we find it unnecessary to pass on the Respondent's motion to strike.



Valley Ranch Resort Spa Casino, Henderson, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Union of Operating Engineers Local 501, AFL-CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondents' unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

(b) Within 14 days after service by the Region, post at its facility in Henderson, Nevada, copies of the attached notice marked "Appendix."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 6, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the

Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is denied with respect to the allegation concerning social security numbers in paragraph 6(a)(1) of the complaint, and to the allegations in paragraphs 6(a)7 and 8 of the complaint, and that these allegations are remanded to the Regional Director for Region 28 for further appropriate action.

Dated, Washington, D.C. August 27, 2018

Mark Gaston Pearce, Member

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the International Union of Operating Engineers Local 501, AFL-CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

<sup>10</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

STATION GVR ACQUISITION, LLC D/B/A GREEN VALLEY RANCH RESORT SPA CASINO

5

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

STATION GVR ACQUISITION, LLC D/B/A  
GREEN VALLEY RANCH RESORT SPA  
CASINO

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-211043> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



# **EXHIBIT C**

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino and International Union of Operating Engineers Local 501, AFL-CIO.** Case 28-CA-211043 and 28-CA-216411

August 27, 2018

**DECISION AND ORDER**

BY MEMBERS PEARCE, MCFERRAN, AND KAPLAN

The General Counsel seeks partial summary judgment in this case on the grounds that there are no genuine issues of material fact as to certain allegations in the complaint, and that the Board should find, as a matter of law, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of a unit of the Respondent's employees.<sup>1</sup>

Pursuant to charges filed by the Union on December 5, 2017, and March 8, 2018, and an amended charge filed on March 22, 2018, the General Counsel issued a consolidated complaint (complaint) on April 27, 2018.<sup>2</sup> The complaint alleges, among other things, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with requested information. The Respondent filed an answer admitting in part and denying in part the allegations of the complaint.

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<sup>1</sup> The General Counsel does not seek summary judgment with respect to allegations, in pars. 6(f) through 6(j) of the complaint, that the Respondent violated Sec. 8(a)(5) and (1) of the Act by changing the amount of notice given to bargaining unit employees when their work schedules are changed.

<sup>2</sup> All subsequent dates are in 2018, unless otherwise indicated.

<sup>3</sup> On May 17, the Board issued an Order denying the Union's Motion for Reconsideration of the Board's April 12 Decision and Order. *Station GVR Acquisition, LLC d/b/a Green Valley Ranch Resort Spa Casino*, 366 NLRB No. 91 (2018).

is pending before the United States Court of Appeals for the District of Columbia Circuit.

On May 8, the General Counsel filed a Motion for Partial Summary Judgment in the current proceeding. On May 14, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response. The Union filed a Joinder in Motion for Summary Judgment and Request for Additional Remedies, the Respondent filed an opposition to the Union's Motion and request for additional remedies, and the Union filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Partial Summary Judgment**

At paragraph 6(a) of the complaint, the General Counsel alleges that about November 6, 2017, the Union requested the following information from the Respondent:

1. A list of current employees including their names, dates of hire, rates of pay, job classifications, last known address, phone number, date of completion of any probationary period, and social security number;
2. Copies of all current job descriptions;
3. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last 24 months;
4. A copy of all company fringe benefit plans including retirement, sick time, profit sharing, severance, stock incentive, vacation, health and welfare, apprenticeship, training, education, legal services, child care or any plans which relate to the employees;
5. Copies of any company wage or salary plans;
6. A copy of all current company personnel policies, practices and procedures;
7. Copies of all contract agreements related with Property Management and/or owner(s);
8. Copies of all Covenants, Conditions and Restrictions (CCM and/or any additional information related to said agreements in the above[]); and
9. Complete Enclosed Employer Contact Information Request Form (E411).

Complaint paragraph 6(b) alleges that since March 8, 2018, the Union requested the following information from the Respondent:

1. Please provide your policy and procedures in regards to slot tournaments;

2. How often are slot tournaments held at Green Valley Ranch Hotel and Casino;
3. What type of notice is provided for special projects, like slot tournaments; and
4. What are the safety policies in regards to installs, conversions and preventative maintenance to slot machines when tournaments take place.

In addition, the complaint alleges that since November 6, 2017, and March 8, 2018, respectively, the Respondent has failed and refused to furnish the Union with the information described in paragraphs 6(a) and 6(b), and that by the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith in violation of Section 8(a)(5) and (1) of the Act.

In its answer, the Respondent admits its refusal to furnish the information, but continues to contest the validity of the certification on the basis of the issues raised and decided by the Board in the underlying representation proceeding. In its response to the Notice to Show Cause, the Respondent further contends that the requested information is not limited to bargaining unit employees and there is no showing of the necessity and relevance of the information as it relates to nonunit employees. With respect to the unit employees, the Respondent asserts that the requested social security numbers are not presumptively relevant and there has been no showing of the necessity of such information. In addition, the Respondent contends that certain requested items, including wage and salary plans, policies related to the security and integrity of the Respondent's gaming machines, information about terms negotiated with third party vendors, and precautions taken to combat illegal gaming and money laundering, are confidential and require a trier of fact to balance the Union's need for the information with the Respondent's confidentiality interests.

With respect to the arguments contesting the Union's certification, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not suggest there is any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We further find that there are no factual issues warranting a hearing with respect to most of the items in the

Union's information request.<sup>4</sup> Specifically, with the exceptions of the request for employee social security numbers,<sup>5</sup> contract agreements related with property management and/or owner(s), and the covenants, conditions and restrictions,<sup>6</sup> the type of information requested by the Union is presumptively relevant for purposes of collective bargaining and the Respondent has not asserted any basis for rebutting the presumptive relevance. See, e.g., *CVS Albany, LLC d/b/a CVS*, 364 NLRB No. 122, slip op. at 1 (2016), *enfd. mem.* 709 Fed. Appx. 10 (D.C. Cir. 2017) (*per curiam*), and *Metro Health Foundations, Inc.*, 338 NLRB 802, 803 (2003). With respect to the Respondent's claims of confidentiality, "the confidentiality claim must be timely raised . . . and a blanket claim of confidentiality will not satisfy [its] burden of proof." *Mission Foods*, 345 NLRB 788, 791 (2005). Here, in its response to the Notice to Show Cause, the Respondent for the first time asserted nothing more than a blanket claim of confidentiality, without any contention that it has made any offer to accommodate the Union's legitimate interest in relevant information. As such, the Respondent's assertion of confidentiality does not excuse its failure to furnish any of the requested information.

Accordingly, we grant the Motion for Partial Summary Judgment with the exceptions of the allegations concerning the Union's request for social security numbers and its request for the information described in paragraphs 6(a) 7 and 6(a) 8 of the complaint.

On the entire record, the Board makes the following

<sup>4</sup> The Respondent's contention, that the information request is not specifically limited to bargaining unit employees, does not justify its blanket refusal to comply with the information request. *DIRECTV U.S. DIRECTV Holdings LLC*, 361 NLRB No. 124, slip op. at 2 (2014). However, in accordance with well-established precedent, to the extent the Union's information request could be construed covering both unit and nonunit employees, it shall be construed as pertaining to unit employees' terms and conditions of employment. See *Id.*; *Freyco Trucking, Inc.*, 338 NLRB 774, 775 fn. 1 (2003).

<sup>5</sup> The Board has held that employee social security numbers are not presumptively relevant and that the requesting union must demonstrate the relevance of such information. *Maple View Manor*, 320 NLRB 1149, 1151 fn. 2 (1996), *enfd. mem.* 107 F.3d 923 (D.C. Cir. 1997) (*per curiam*). Here the Union's request did not specify why it wanted this information and the Union has not otherwise demonstrated its relevance. See *Pallet Cos.*, 361 NLRB 339, 340 fn. 4 (2014), *enfd. mem.* 634 Fed. Appx. 800 (D.C. Cir. 2015) (*per curiam*). We therefore deny summary judgment as to this item and remand this issue to the Region for further appropriate action.

<sup>6</sup> The requests for contract agreements and for covenants, conditions and restrictions appear to seek information about matters outside the bargaining unit and, as such, are not presumptively relevant. See *KIRO, Inc.*, 317 NLRB 1325, 1328 (1995) (information with respect to commercial transactions between the respondent and other company not presumptively relevant). Therefore, we deny summary judgment with respect to those items and remand those issues to the Regional Director for further appropriate action.



## FINDINGS OF FACT

## I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Henderson, Nevada, and has been engaged in operating a hotel and casino.

In conducting its operations during the 12-month period ending December 5, 2017, the Respondent purchased and received at its facility goods valued in excess of \$50,000 directly from points outside the State of Nevada and derived gross revenues in excess of \$500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Sheila Lee and Valerie Mural, the Respondent's senior vice president of human resources, have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.<sup>7</sup>

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time, and extra board slot technicians and utility technicians employed by the Employer at its Henderson, Nevada facility, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

At all times since October 16, 2017, the Union has been certified as the exclusive collective-bargaining representative of the employees in the above-referenced unit under Section 9(a) of the Act.

About November 6, 2017, and March 8, 2018, the Union requested that the Respondent furnish information described above to the Union, and the Respondent failed and refused to furnish the requested information. With the exceptions of social security numbers, contract agreements, and the covenants, conditions and restrictions, the requested information is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, and the Respondent's failure to furnish this information constitutes an unlawful refusal to bargain collectively

<sup>7</sup> In its answer, the Respondent denies the complaint allegation that Sheila Lee is its director of human resources, but admits that Lee is a supervisor and an agent within the meaning of the Act.

with the Union in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing since about November 6, 2017, and March 8, 2018, to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees, we shall order the Respondents to furnish the Union with information requested November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with Property Management and/or owner(s), and copies of covenants, conditions and restrictions, (CCM and/or any additional information related to said agreements in the above).<sup>8</sup>

The Union requests additional enhanced remedies.<sup>9</sup> Contrary to the Union's assertions, there has been no showing that the Board's traditional remedies are insufficient to redress the information request violations committed by the Respondent. Accordingly, we deny the Union's request for additional remedies.

## ORDER

The National Labor Relations Board orders that the Respondent, Station GVR Acquisition, LLC d/b/a Green

<sup>8</sup> The General Counsel has requested that the initial certification year be extended to begin on the date that the Respondent commences to bargain in good faith with the Union. Because this same remedy was requested and granted in our previous decision, it is unnecessary to order it here again. *Station GVR Acquisition, LLC*, 366 NLRB No. 58, slip op. at 2.

<sup>9</sup> Because the Union has not shown that the traditional remedies are inadequate, we find it unnecessary to pass on the Respondent's motion to strike.

Valley Ranch Resort Spa Casino, Henderson, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the International Union of Operating Engineers Local 501, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union’s performance of its functions as the collective-bargaining representative of the Respondents’ unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

(b) Within 14 days after service by the Region, post at its facility in Henderson, Nevada, copies of the attached notice marked “Appendix.”<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 6, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the

Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the General Counsel’s Motion for Partial Summary Judgment is denied with respect to the allegation concerning social security numbers in paragraph 6(a)(1) of the complaint, and to the allegations in paragraphs 6(a)7 and 8 of the complaint, and that these allegations are remanded to the Regional Director for Region 28 for further appropriate action.

Dated, Washington, D.C. August 27, 2018

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Mark Gaston Pearce, Member

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the International Union of Operating Engineers Local 501, AFL–CIO (the Union) by failing and refusing to furnish it with requested information that is relevant and necessary to the Union’s performance of its functions as the collective-bargaining representative of our unit employees.

<sup>10</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on November 6, 2017, and March 8, 2018, to the extent the information pertains to current or former unit employees, with the exceptions of employee social security numbers, copies of all contract agreements related with property management and/or owner(s), and copies of all covenants, conditions and restrictions and related information.

STATION GVR ACQUISITION, LLC D/B/A  
GREEN VALLEY RANCH RESORT SPA  
CASINO

The Board's decision can be found at <https://www.nlr.gov/case/28-CA-211043> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



## **EXHIBIT D**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL  
501 AFL-CIO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO,

Intervenor.

CASE NO. 18-71124

Board Case No. 28-CA-214925

STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent,

Case No. 18-72079

Board Case No. 28-CA-214925

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

and

STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO,

Respondent.

Case No. 18-72121

Board Case No. 28-CA-214925

INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL  
501 AFL-CIO,

Petitioner,

and

NATIONAL LABOR RELATIONS  
BOARD,

Respondent.

Case No. 18-72434

Board Case No. 28-CA-211043 and  
28-CA-216411

### **MOTION TO CONSOLIDATE CASES**

The Petitioner in case 18-71124 and the Petitioner in case 18-72434, the International Union of Operating Engineers hereby moves this Court for an Order consolidating these cases.

This consolidation is appropriate because the first case involves the employer's refusal to bargain with the Charging Party after certification in favor of the Charging Party issued. This is known as a test of certification.

The more recently filed case is part of that test of certification. In a separate proceeding, the Board has now found that the Board violated the Act by refusing to provide information to the Charging Party as part of bargaining and representation of the employees. Much of the information needed by the Charging Party is necessary and relevant to bargaining. The employer's position is that it will not provide any information because it claims that it has no duty to do so because the Union was never properly certified by the Board. This is the issue pending in the earlier test of certification case.

It should be clear from this description that the more recent case is directly related to an outgrowth of the earlier case and should be consolidated for briefing and all purposes.

For these reasons, the Court should consolidate these cases.

Dated: September 5, 2018

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By: /s/ DAVID A. ROSENFELD  
DAVID A. ROSENFELD

Attorneys for INTERNATIONAL UNION  
OF OPERATING ENGINEERS LOCAL  
501 AFL-CIO

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## CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I certify that on September 5, 2018, the **MOTION TO CONSOLIDATE CASES** was served on all parties or their counsel of record by electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from [kshaw@unioncounsel.net](mailto:kshaw@unioncounsel.net) to the email addresses set forth below:

Farah Qureshi  
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Office of Executive Secretary (Vacant)  
National Labor Relations Board  
1015 Half Street SE  
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*International Union of Operating Engineers  
Local 501, AFL-CIO*

I certify that the above is true and correct. Executed at Alameda, California, on  
September 5, 2018.

/s/ Katrina Shaw  
Katrina Shaw

**From:** (b) (6), (b) (7)(C)  
**To:** [Overstreet, Cornele](#); [Oviedo, Elise F.](#); [Harriet.Lipkin@dlapiper.com](mailto:Harriet.Lipkin@dlapiper.com); [Kevin.Harlow@dlapiper.com](mailto:Kevin.Harlow@dlapiper.com); [Christine.Yang@dlapiper.com](mailto:Christine.Yang@dlapiper.com)  
**Subject:** NLRB Case No. 28-CA-225209  
**Date:** Thursday, September 13, 2018 7:16:32 PM  
**Attachments:** [2018-09-12 Reply in Opp to Response to Show Cause.pdf](#)

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Please find the attached document in the above referenced case. Please note that I inadvertently did not email this yesterday as intended.

Regards,

(b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C) David Holsberry, Lorrie Culp, Sarah Grossman-Swenson & A. Mirella Nieto  
McCracken, Stemerman & Holsberry, LLP  
595 Market Street, Suite 800  
San Francisco, CA 94105  
Telephone: (415) 597-7200  
Fax: (415) 597-7201

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**STATION GVR ACQUISITION, LLC  
d/b/a GREEN VALLEY RANCH  
RESORT SPA CASINO**

**Case No. 28-CA-224209**

**Respondent,**

**and**

**LOCAL JOINT EXECUTIVE BOARD  
OF LAS VEGAS, A/W UNITE HERE  
INTERNATIONAL UNION,**

**Charging Party.**

**CHARGING PARTY'S REPLY IN OPPOSITION TO RESPONDENT'S RESPONSE  
TO NOTICE TO SHOW CAUSE**

Submitted by:

Eric B. Myers  
McCracken, Stemerman & Holsberry, LLP  
595 Market Street, Suite 800  
San Francisco, CA 94105  
Telephone: 415-597-7200  
Facsimile: 415-597-7201  
E-Mail: ebm@msh.law  
Attorneys for Charging Party

Charging Party Local Joint Executive Board of Las Vegas hereby replies in opposition to Respondent Station Acquisition, LLC dba Green Valley Ranch Resort Spa Casino's Response to Motion For Summary Judgment and Notice to Show Cause.

Respondent's response to the Notice to Show Cause attempts to relitigate the issues that the Board previously ruled upon in its July 18, 2018 denial of Respondent's request for review in 28-RC-208266. Section 102.67(g) of the Board's Rules and Regulations bars Respondent from seeking to relitigate those issues. *See* 29 C.F.R. 102.67(g); *see also Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 159-163 (1941); *Delek Refining, Ltd.*, 363 NLRB No. 41 (Nov. 13, 2015); *Fedex Freight, Inc.*, 362 NLRB No. 140 (June 30, 2015); *The George Washington University*, 346 NLRB 155 (2005), *enfd. per curiam* 2006 WL 4539237 (D.C. Cir. 2006); *Ovid Convalescent Manor, Inc.*, 264 NLRB 11 A, 775 (1982), *enfd. mem.* 732 F.2d 155 (6th Cir. 1984); *Lighthouse for the Blind of Houston*, 248 NLRB 1366, 1367 (1980), *enfd.* 696 F.2d 399 (5th Cir. 1983); *Boatel, Inc.*, 204 NLRB 896, 897 (1973), *enfd. mem.* 490 F.2d 990 (5th Cir. 1974); *Keco Industries, Inc.*, 191 NLRB 257, 258 (1971), *enfd.* 458 F.2d 1356 (6th Cir. 1972); *General Dynamics Corp.*, 187 NLRB 679, 680 (1971), *enfd. per curiam* 447 F.2d 1370 (5th Cir. 1971); *Westinghouse Broadcasting Company, Inc.*, 218 NLRB 693 (1975).

The Board correctly denied Respondent's request for review in the underlying representation case because it presented no grounds warranting such review. Respondent's effort to relitigate the theories is contrary to clearly established law. Summary judgment should be granted forthwith, and Respondent should be ordered to comply with its duty under the National Labor Relations Act to negotiate in good faith with the Charging Party.

Dated: September 12, 2018

Respectfully submitted,

/s/*Eric B. Myers*

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**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled **CHARGING PARTY'S REPLY IN OPPOSITION TO RESPONDENT'S RESPONSE TO NOTICE TO SHOW CAUSE** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 12th day of September, 2018 as follows:

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*Kevin.Harlow@dlapiper.com*  
*Christine.Yang@dlapiper.com*

*Attorneys for Respondent*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 12, 2018 at San Francisco, California.

/s/Charles Gonzalez  
Charles Gonzalez